CTA Form No. 8

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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 9933

C.U.T. COMMERCIAL CORPORATION,
Petitioner,

- versus -

NOTICE OF DECISION

BUREAU OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. MARVEEN B. DELA PAZ
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
BIR Road, Diliman, Quezon City

GALIAS & RIVERA LAW OFFICES
3rd Floor, Prestige Tower, F. Ortigas Jr. Road
Ortigas Center, Pasig City

GREETINGS:

You are hereby notified by these presents that on **March 22, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 25, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

C.U.T. COMMERCIAL CORPORATION, *Petitioner,*	**CTA Case No. 9933**
- versus -	Members: **DEL ROSARIO,** *PJ, Chairperson,* **MANAHAN,** and **REYES-FAJARDO,** *JJ.*
BUREAU OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAR 2 2 2024 1:30 PM

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DECISION

REYES-FAJARDO, J.:

Before the Court is a Petition for Review with Motion to Suspend Collection of Taxes[1] filed by C.U.T. Commercial Corporation (petitioner or C.U.T. Commercial) on September 24, 2018 against respondent Bureau of Internal Revenue (BIR) asking the Court to declare as void the Preliminary Collection Letter[2] dated August 15, 2018 (PCL) relative to alleged deficiency taxes for taxable year 2014 amounting to ₱1,343,766.85, inclusive of interest and compromise penalty.

FACTS

C.U.T. Commercial is an existing and duly organized corporation under Philippine laws, with principal address at 22 Quezon St., Iloilo City Proper, Iloilo City, Iloilo.[3] It derives revenues from sales of cleaning articles.[4]

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1 Docket, pp. 10-15.
2 Exhibit "P-7," Docket, p. 487.
3 *Petition for Review,* Par. 1, Docket, p. 10.
4 *Judicial Affidavit of Mr. Keiner Chua,* Q&A No. 5, Exhibit "P-11," Docket, p. 296.

On the other hand, the BIR is a government agency,[5] the powers and duties of which include that of collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith.[6]

Pursuant to a **Letter of Authority (LOA)**[7] dated September 8, 2015, revenue officers commenced the examination of C.U.T. Commercial's books of account relative to taxable year 2014. Petitioner received the LOA on October 1, 2015.[8]

On June 5, 2017, the BIR issued **Preliminary Assessment Notice,**[9] with attached Details of Discrepancies[10] (collectively referred to as "PAN") relative to alleged deficiency income tax for taxable year 2014 in the aggregate amount of ₱1,328,158.97, computed as follows:

Taxable income per income tax return (ITR)		₱439,615.00
Add Discrepancy per investigation		
1 Undeclared income from undeclared accounts receivable per investigation	₱519,999.50	
2 Undeclared income from undeclared purchases per investigation	881,191.47	
3 Undocumented expenses	670,073.77	
4 Non-deductible expenses	692,466.02	2,763,730.76
Taxable income per investigation		*₱3,203,345.76*
Income tax rate		30%
Basic income tax due		*₱961,003.73*
Less Tax paid/withheld per return		42,153.00
Subtotal		₱918,850.73
Add 20% interest p.a. from 4/16/15 to 6/30/17		406,308.24
Compromise penalty		*3,000.00*
Total amount due		₱1,328,158.97

Petitioner received a copy of the PAN on **June 20, 2017.**[11]

On July 6, 2017, the BIR[12] issued a **Formal Letter of Demand,** with attached Details of Discrepancies, and **Final Assessment Notices**

[5] *Joint Stipulation of Facts (JSFI)*, Par. 1, Docket, p. 258.
[6] Section 2, National Internal Revenue Code of 1997, as amended.
[7] SN: eLA201100059826, Exhibit "P-1," Docket p. 422.
[8] *Joint Stipulation of Facts and Issues (JSFI)*, Par. 2, Docket, p. 258.
[9] Exhibit "P-3," Docket, pp. 423-424.
[10] Exhibit "P-3," Docket, pp. 425-426.
[11] *JSFI*, Par. 3, Docket, p. 258.
[12] Through Alberto S. Olasiman, Regional Director.

(collectively referred to as "FLD/FAN"),[13] requesting C.U.T. Commercial to pay deficiency taxes amounting to ₱1,343,766.85, computed as follows:

Taxable income per income tax return (ITR)		₱439,615.00
Add Discrepancy per investigation		
1 Undeclared income from undeclared accounts receivable per investigation	₱519,999.50	
2 Undeclared income from undeclared purchases per investigation	881,191.47	
3 Undocumented expenses	670,073.77	
4 Non-deductible expenses	692,466.02	2,763,730.76
Taxable income per investigation		*₱3,203,345.76*
Income tax rate		30%
Basic income tax due		*₱961,003.73*
Less Tax paid/withheld per return		42,153.00
Subtotal		₱918,850.73
Add 20% interest p.a. from 4/16/15 to 7/31/17		421,916.12
Compromise penalty		*3,000.00*
Total amount due		₱1,343,766.85

Petitioner received a copy of the FLD/FAN on September 7, 2017.[14] Subsequently, it filed a Legal Petition Notice[15] on October 5, 2017 to protest the assessment (**administrative protest**).

However, on February 15, 2018, Alberto S. Olasiman, *BIR Regional Director*,[16] issued a **Final Decision on Disputed Assessment (FDDA)**,[17] finding petitioner's administrative protest unmeritorious, to wit:

> This has reference to your Legal Petition Letter dated September 30, 2017 protesting against the calendar year 2014 deficiency income tax and suggested compromise penalties in the amount of ₱1,340,766.85 and ₱3,000.00, respectively, the subject matter of our covering letter of demand dated July 6, 2017. Re-investigation of the case was conducted upon your submission of additional documents. Upon scrutiny by the examiner of the documents you presented on November 28, 2017, it was found out that such were insufficient and lack legal basis or merit to make adjustments to the previous findings, thus, upholding the

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[13] Exhibit "P-3," Docket, pp. 427-434.

[14] *JSFI*, Par. 4, Docket, p. 258.

[15] Exhibit "P-4," Docket, pp. 435-448.

[16] Through Alberto S. Olasiman, Regional Director.

[17] Exhibit "P-5," Docket, pp. 455-457.

> assessment made. Hence, there has been found due from you tax liabilities as shown hereunder.
>
> x x x
> The aforesaid assessment is premised on the following:
>
> x x x
>
> It is requested that you aforementioned deficiency income tax and suggested compromise penalties be paid immediately upon receipt hereon, inclusive of penalties incident to delinquency. Please note that the interest will have to be adjusted if paid beyond March 15, 2018. **This is our final decision. If you disagree, you may appeal this final decision to the Court of Tax Appeal (sic) or to the Commissioner of Internal Revenue through request for reconsideration within thirty (30) days from date of receipt hereof, otherwise our said deficiency income tax, value added tax, expanded withholding tax and suggested compromise penalties assessment shall become final, executory and demandable.** (Boldfacing supplied)

C.U.T. Commercial received a copy of the FDDA on March 5, 2018. Thereafter, on April 2, 2018, it sought reconsideration of the Regional Director's FDDA *from the CIR*, through filing another Legal Petition Notice[18] dated March 27, 2018 (**motion for reconsideration**).

Without awaiting the CIR's resolution of C.U.T. Commercial's motion for reconsideration, the BIR, through Lilibeth L. Po, Officer-in-Charge, BIR Collection Division, issued the assailed **PCL[19] dated August 15, 2018**, requesting payment of outstanding tax obligation amounting to ₱1,343,766.85, with a reminder of possible implementation of summary administrative remedies for collection in case of non-payment.

Alleging that it received a copy of the PCL on August 23, 2018,[20] C.U.T. Commercial filed the present petition on September 24, 2018, praying for the cancellation of the PCL and suspension of the collection of taxes.

The BIR responded by filing its Opposition with Motion to Dismiss on November 7, 2018,[21] arguing in the main that the Court has

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[18] Exhibit "P-6," Docket, pp. 458-464.
[19] Exhibit "P-7," Docket, p. 487.
[20] *Petition for Review*, Pars. 3 and 11, Docket, pp. 10, 11-12.
[21] Docket, pp. 64-71.

no jurisdiction over the present petition, hence, it cannot grant ancillary remedies in relation thereto. Petitioner then filed a corresponding Opposition (To Respondent's Motion to Dismiss) on December 10, 2018,[22] to which respondent also posted its Reply with Leave of Court (Re: Petitioner's Opposition to Respondent's Motion to Dismiss) on January 3, 2019.[23]

Meanwhile, petitioner's *Motion to Suspend Collection of Taxes* was heard on December 6, 2018.[24] It presented the testimony of its lone witness Ms. Divine Grace Fresco,[25] together with the documentary evidence in support of its allegations.

Thereafter, both parties filed their *Memoranda* on December 11, 2018.[26] C.U.T. Commercial also filed its Formal Offer of Evidence (Re: Motion to Suspend Collection of Taxes) on even date, with respondent's Comment thereto posted on December 14, 2018.

In the Resolution dated February 11, 2019,[27] the Court admitted petitioner's offered Exhibits "P-6," "P-10," and "P-10-a" in support of its *Motion to Suspend Collection of Taxes*, but denied the admission of Exhibits "P-1," "P-2," "P-3," "P-4," "P-5,"[28] "P-7,"[29] "P-8," and "P-9,"[30] thereby deeming the *Motion to Suspend Collection of Taxes* submitted for resolution.

On February 15, 2019, respondent transmitted the *BIR Records* for present the case.[31]

In the Resolution dated March 21, 2019,[32] the Court denied, for lack of merit, both respondent's *Motion to Dismiss*, and petitioner's *Motion to Suspend Collection of Taxes*.

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22 Docket, pp. 126-129.
23 Docket, pp. 130-137.
24 Minutes of the Hearing held on, and Order dated, December 6, 2018, Docket, pp. 91-91-B.
25 Exhibit "P-10", Docket, pp. 77-85.
26 Docket, pp. 99-105 and 107-111.
27 Docket, pp. 175-176.
28 For failure to present originals for comparison and failure to mark.
29 For not being found in the records of the case and failure of the exhibit formally offered to correspond with the document identified.
30 For not being found in the records of the case.
31 Docket, pp. 178-183.
32 Docket, pp. 187-191.

The Pre-Trial Conference was initially set on May 30, 2019,[33] but was cancelled later on, in view of the Court's directive requiring the parties to proceed to mediation before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA).

However, the parties did not agree to mediate.[34] Thus, in the Resolution dated July 8, 2019,[35] the Court reset the Pre-Trial Conference on October 10, 2019.[36]

In the meantime, the parties filed their respective pre-trial briefs.[37]

Pre-Trial was terminated in view of the Resolution dated November 7, 2019,[38] where Court approved the parties' *Joint Stipulation of Facts and Issues (JSFI)*.[39] The Court issued the Pre-Trial Order on December 10, 2019.[40]

During trial, C.U.T. Commercial presented the following witnesses: (1) Ms. Divine Grace Fresco,[41] petitioner's tax consultant; and (2) Mr. Keiner Cua,[42] petitioner's Assistant Manager.

On June 10, 2020, petitioner filed a *Motion to Cancel Assessment*,[43] in view of its availment of the benefits under Republic Act (R.A.) No. 11213, otherwise known as "The Tax Amnesty Act of 2019." Respondent did not file any comment to this *Motion*.[44]

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[33] Notice of Pre-Trial Conference dated March 26, 2019, Docket, pp. 192-193.
[34] *No Agreement To Mediate* dated July 1, 2019, Docket, p. 208.
[35] Docket, p. 213.
[36] Urgent Motion to Reset Pre-Trial Conference filed by respondent on August 16, 2019 and Order dated August 20, 2019, Docket, pp. 214-216 and 218-219, respectively; Minutes of Hearing held on, and Order dated, October 19, 2019, Docket, pp. 233-235 and 237-238.
[37] For Petitioner, see Docket, pp. 220-224; for Respondent, see Docket, pp. 229-232.
[38] Docket, pp. 266-267.
[39] Docket, pp. 258-263.
[40] Docket, pp. 269-275.
[41] Exhibit "P-10," Docket, pp. 77-85; Minutes of hearing held on, and Order dated December 12, 2019, Docket, pp. 283-287.
[42] Exhibit "P-11," Docket, pp. 295 to 302; Minutes of hearing held on, and Order dated January 28, 2020, Docket, pp. 303-305.
[43] Docket, pp. 322-328.
[44] Records Verification dated November 20, 2020 issued by this Court's Judicial Records Division, Docket, p. 352.

In the Resolution dated March 30, 2022,[45] the Court denied the *Motion to Cancel Assessment*, on account of C.U.T. Commercial's failure to submit the *Notice of Issuance of Authority to Cancel Assessment* (NIATCA), despite having been given numerous opportunities to submit the same before the Court.[46]

C.U.T. Commercial made a formal offer of evidence on May 2, 2022.[47] Respondent filed its Comment (on Petitioner's Formal Offer of Evidence) on May 20, 2022.[48] In the Resolution dated June 28, 2022,[49] the Court admitted all of petitioner's offered exhibits.

For its part, the BIR offered the testimony of Revenue Officer (RO) Ma. Cecilia P. Lim-Nava[50] and filed its formal offer of evidence on October 18, 2022.[51] There being no opposition coming from petitioner, the Court admitted all of respondent's exhibits in a Resolution dated January 6, 2023.[52]

The present case was submitted for decision on March 29, 2023,[53] sans the parties' memoranda.[54] Nonetheless, C.U.T. Commercial filed its *Memorandum*[55] on April 20, 2023, which was admitted by the Court in its Resolution dated June 9, 2023.[56]

Parties' Arguments

In the main, petitioner argues that the PCL was premature, taken that its motion for reconsideration of the FDDA was still pending before the CIR.[57]

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45 Docket, pp. 415 to 416.

46 Resolutions dated May 20, 2021 and July 16, 2021, Docket, pp. 394 and 398, respectively; Manifestation with Motion filed by petitioner on thru electronic mail on October 19, 2021 and received by the Court on November 23, 2021, Docket, pp. 408-411.

47 Docket, pp. 417-421.

48 Docket, pp. 489-490.

49 Docket, pp. 497-498.

50 Exhibit "R-17," Docket, pp. 250-257; Minutes of the hearing held on, and Order dated, August 16, 2022, Docket, pp. 500-502.

51 Docket, pp. 515-520.

52 Docket, pp. 526-528.

53 Minute Resolution dated March 29, 2023, Docket, p. 530.

54 Records Verification dated March 14, 2023 issued by this Court's Judicial Records Division, Docket, p. 529.

55 Through a *Motion to Admit Memorandum*, attaching the said Memorandum, Docket, pp. 532-534.

56 Docket, pp. 548-549

57 *Petition for Review*, Pars. 12-14, Docket, p. 12.

Respondent counters that the Court does not have jurisdiction over the instant petition; the issuance of the PCL was proper, taken that the FDDA had already become final and executory. In particular, the BIR insists that the CIR resolved C.U.T. Commercial's motion for reconsideration of the FDDA. Said ruling was issued on June 26, 2018 and a copy thereof served upon petitioner on August 17, 2018, giving C.U.T. Commercial 30 days therefrom or until June 17, 2018 to elevate the case to the Court.[58] Taken that the present petition was filed only on September 21, 2018, it had lost its right to appeal the assessment, which, in turn, had become final and executory.[59]

ISSUES

Based on the above-mentioned submissions and the joint statement[60] issued by the parties, We restate the issues as follows:

I. Does the Court have jurisdiction over the present petition, assailing the PCL?

II. Is the PCL valid? May the BIR proceed to collect alleged deficiency taxes during the pendency of the aggrieved taxpayer's motion for reconsideration before the CIR?

OUR RULING

The Petition for Review is meritorious.

The Court has jurisdiction over the present petition.

The law confers exclusive appellate jurisdiction upon the Court to review the CIR's decisions/inaction on disputed assessments and "other matters" arising from the BIR's administration of tax laws and regulations.[61]

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[58] *Answer*, Docket, p. 161.
[59] *Answer*, Docket, p. 161.
[60] *JSFI*, Par. II, Docket, p. 259.
[61] Section 7(a)(1), Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282.

While the controversy between the parties here stems from a tax assessment, the present petition seeks to nullify the PCL. The subject matter of this action is **the BIR's attempt to collect alleged deficiency taxes through the PCL, not a disputed assessment.**

Collection measures employed by the tax authorities come within Our jurisdiction under "other matters" reviewable by the Court, as provided in Section 7(a)(1) of R.A. No. 1125, as amended by R.A. No. 9282. The Supreme Court discussed this matter in *Commissioner of Internal Revenue v. Bank of the Philippine Islands,*[62] *viz.*:

> As the CTA correctly pointed out, BPI did not come to question any final decision issued in connection with Citytrust's assessments. They went before the CTA primarily to assail the November 2011 Warrant's issuance and implementation. To be sure, the issue for the CTA to resolve was the propriety not of any assessment but of a tax collection measure implemented against BPI. Accordingly, the CTA's disposition was distinctly for the cancellation of the warrant and nothing else.
>
> The law expressly vests the CTA the authority to take cognizance of "other matters" arising from the 1977 Tax Code and other laws administered by the BIR which necessarily includes rules, regulations, and measures on the collection of tax. Tax collection is part and parcel of the CIR's power to make assessments and prescribe additional requirements for tax administration and enforcement.

Notably, that the PCL had been issued and served upon C.U.T. Commercial were not contested by respondent. Petitioner received a copy of the subject PCL on August 23, 2018.[63] The reglementary period to appeal this to the Court is 30 days[64] from receipt thereof or until September 24, 2018.[65] Thus, the instant petition was timely filed, taken that it was lodged on September 24, 2018, the last day of the 30-day period.

The PCL is void.

The BIR's authority to proceed against the taxpayer for the collection of taxes is grounded on the premise that the taxpayer has

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[62] G.R. No. 227049, September 16, 2020.
[63] Exhibit "P-7," Docket, p. 487.
[64] Section 11, R.A. No. 1125, as amended by R.A. No. 9262.
[65] The 30th day counted from August 23, 2018 was August 22, 2018, which fell on a Saturday. Thus, the last day of filing shall be on the following business day, August 24, 2018, Monday.

become *delinquent*.[66] One of the instances wherein a taxpayer becomes delinquent is when an assessment issued against it becomes final and executory and, thus, due and demandable. An assessment lapses into finality when the taxpayer fails to protest or seek reconsideration thereof within the time allowed by the law and allows it to lapse into finality.

Certainly, when the taxpayer does contest the assessment in a manner that is timely and sanctioned by the administrative procedural framework, the tax authorities are bound to consider the protest first, before proceeding against the taxpayer for collection. **When there is a pending protest, the assessment is non-demandable and the BIR cannot collect a non-demandable assessment.**

In *Light Rail Transit Authority v. Bureau of Internal Revenue* (*LRTA Case*),[67] the BIR issued a PCL despite the pendency of the taxpayer's administrative appeal to the CIR, seeking reconsideration of the FDDA issued by the Regional Director. In said case, the Supreme Court explained that to ground the collection measures on the premise of the existence of "delinquent taxes" is incorrect. A PCL, as well as a Final Notice Before Seizure, Warrant of Distraint and/or Levy, or other means of summary administrative collection, remain **tentative** for as long as there is a pending administrative appeal before the Office of the CIR. The assessment was still non-demandable. As such, collection measures emanating from such assessment shall be void and of no force and effect. Thus, the Supreme Court explained:

> **Neither can the 30-day period for filing a petition for review be reckoned from petitioner's receipt of any of the following issuances: the Preliminary Collection Letter**, the Final Notice Before Seizure, the Warrant of Distraint and/or Levy, the April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 Letter dropping the request for reconsideration of the Warrant of Distraint and/or Levy. Like the Final Decision on Disputed Assessment, all of these were not final decisions on the appeal by the Commissioner of Internal Revenue. **They remained tentative given the pendency of the petitioner's appeal with the Office of the Commissioner. More importantly, all of these were issued on the premise that "delinquent taxes" exist, an incorrect premise. To repeat, the assessment was still pending appeal with the Office of the Commissioner when these issuances were made. The Preliminary Collection Letter, the Final Notice Before Seizure, the Warrant of Distraint and/or Levy, the**

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[66] Section 205 of the Tax Code sets out the remedies for collection of *delinquent* taxes.
[67] G.R. No. 231238, June 20, 2022.

> **April 4, 2013 Letter reconsidering the issuance of the Warrant of Distraint and/or Levy, and the June 9, 2014 denying the request for reconsideration all emanated from a non-demandable assessment. As such, all were void and should be of no force and effect.** (Boldfacing supplied)

Likewise, the assessment against C.U.T. Commercial remained to be non-demandable, on account of circumstances similar to those in the *LRTA Case*: *First*, the Regional Director issued an FDDA denying C.U.T. Commercial's administrative protest. *Second*, C.U.T. Commercial appealed to the CIR through a motion for reconsideration of the Regional Director's FDDA. *Third*, the BIR Collection Division issued the assailed PCL prior to the CIR's final resolution of petitioner's motion for reconsideration.

Respondent insists that (a) the CIR, in fact, resolved C.U.T. Commercial's motion for reconsideration on June 26, 2018, and (b) petitioner received a copy of which on August 17, 2018.[68] However, these do not persuade inasmuch as there is nothing in respondent's formal offer, including the BIR Records[69] and the testimony of its lone witness,[70] supporting these averments.

In other words, the assessment against C.U.T. Commercial remained tentative in view of the pending motion for reconsideration before the CIR. As the assailed PCL was issued and implemented notwithstanding that the assessment was not yet due and demandable, it is void and without force and effect.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **GRANTED**. The subject Preliminary Collection Letter dated August 15, 2018 is **ANNULLED** for being void and ineffectual.

SO ORDERED.

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

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[68] *Answer*, Par. 8, Docket, p. 161.
[69] Exhibit "R-16," BIR Records, One (1) Folder.
[70] Exhibit "R-17," Docket, pp. 250-256; Transcript of Stenographic Notes (TSN) dated August 16, 2022.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice