REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

OPAL PORTFOLIO INVESTMENTS [FISTC-AMC (ASSET MANAGEMENT COMPANY)], INC. Formerly Opal Portfolio Investments (SPV-AMC), Inc.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **11187**

Members:

DEL ROSARIO, *P.J.*, *Chairperson*,
BACORRO-VILLENA, *and*
CUI-DAVID, *JJ.*

Promulgated:
SEP 2 8 2023; 3:15PM

x - x

RESOLUTION

For the Court's resolution are the following:

1) Petitioner's "Verified Motion for Issuance of Preliminary Injunction with Prayer to Set Motion for Hearing"[1] (**Verified Motion for the Issuance of Preliminary Injunction**) filed on 04 July 2023; and,

2) Respondent's "Motion with Leave of Court to Admit Attached Comment"[2] filed on 18 July 2023.

On 13 June 2023, petitioner filed a Petition for Review[3] (**petition**) challenging the validity of respondent's issuance of a Warrant of Distraint and/or Levy[4] (**WDL**) and Warrant of Garnishment[5] (**WOG**) against petitioner (**collectively referred to as the "assailed warrants"**).

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1 Division Docket, pp. 119-122.
2 Id., pp. 154-176.
3 Id., pp. 7-22.
4 Exhibit "P-2", id., p. 137.
5 Exhibit "P-3", id., p. 138.

On 04 July 2023, petitioner also filed a Verified Motion for Issuance of Preliminary Injunction.[6] On 11 July 2023, a hearing on the said motion was conducted with the Court treating the same as Motion for Suspension of the Collection of Taxes (**Motion to Suspend**).[7]

During the hearing of 11 July 2023, only petitioner's counsel appeared and proceeded to call to the witness stand Rommel Villanueva[8] (**Villanueva**), petitioner's accountant.

In his testimony, Villanueva alleged that the assailed warrants[9] were issued in violation of petitioner's right to due process considering that respondent Commissioner of Internal Revenue (**CIR/respondent**) has yet to promulgate any decision on petitioner's administrative protest of the Formal Letter of Demand (**FLD**). Without a decision on its protest, Villanueva stated that the assessment against petitioner is not yet final and executory to warrant the institution of collection remedies such as the assailed warrants.[10]

On the grounds testified on, petitioner thus prayed that the collection of the taxes subject of the assailed warrants be suspended without need of posting a bond.

A review of the petition shows that petitioner alleges receipt of a Preliminary Assessment Notice (**PAN**) signed by the Assistant Commissioner for Internal Revenue of the Large Taxpayers Service (**ACIR-LTS**) on 08 March 2022. On 19 May 2022, petitioner received a Final Assessment Notice (**FAN**) and FLD signed by the Deputy Commissioner of Internal Revenue (**DCIR**) of Operations. On 31 May 2022, it filed a protest to the FAN addressed to the ACIR-LTS. In an undated Letter, the protest was rejected or denied. Petitioner received the Letter-Denial on 09 August 2022.

Later, petitioner filed a protest against the FLD/FAN, but the same was <u>addressed to the ACIR-LTS</u> <u>instead of the DCIR of Operations</u> who issued the FLD/FAN. Still later, the ACIR-LTS denied petitioner's protest of the FLD/FAN stating that he had lost jurisdiction over the case after the latter filed the protest with the wrong office.

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6 Id., pp. 119-124.
7 See Minutes of the Hearing and Order dated 11 July 2023, id., pp. 141-145 and pp. 146-148, respectively.
8 Exhibits "P-4" to "P-4-1", Judicial Affidavit of Rommel Villanueva, id., pp. 105-112.
9 Supra at notes 4 and 5.
10 Id.

Aggrieved, petitioner filed a Request for Reconsideration before respondent who, as of this date, has not acted thereon. While the case is pending before respondent, petitioner received the assailed warrants from the ACIR-LTS (now subject of this present case).

We resolve.

Prior to any action on petitioner's motion, it is necessary for the Court to first determine whether it has jurisdiction over the case at bar given the peculiarity of the circumstances more so that, petitioner's petition is silent as regards the ground for its filing.

Petitioner terms its petition as an "appeal" from the assailed warrants' issuance. Although not directly raised, petitioner appears to be invoking the Court's jurisdiction over "other matters" arising from relevant tax laws, pursuant to Section 7(a)(2) of Republic Act (**RA**) No. 1125[11], as amended by RA No. 9282[12], which states:

> ...
> Sec. 7. Jurisdiction. - The CTA shall exercise:
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> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> ...
>
> 2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or **other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action**, in which case the inaction shall be deemed a denial[.][13]
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> ...

Petitioner's allegations and the evidence so far presented admit that the administrative dispute of the assessment against it is still pending before the respondent as the latter has yet to act on its Request for Reconsideration. This Court's jurisdiction over "other

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11 AN ACT CREATING THE COURT OF TAX APPEALS.

12 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.

13 Emphasis supplied.

matters" governed by the National Internal Revenue Code (**NIRC**) of 1997, as amended, or other laws administered by the Bureau of Internal Revenue (**BIR**) is only applicable when the NIRC provides a specific period of action after such issuance as provided in the above provision. However, there is no specific period stated in the NIRC of 1997, as amended, to question the legality of the assailed warrants' issuance.

As an exception, the Court can consider such issuances appealable when the same can be construed as the final decision of respondent. This much is made clear in *Light Rail Transit Authority v. Bureau of Internal Revenue, et al.*[14] (**LRTA**), wherein the Supreme Court ruled emphatically:

> ...
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> *Commissioner of Internal Revenue v. Isabela Cultural Corporation* cannot be made basis to claim that the Final Notice Before Seizure is the final decision on the protest appealable to the Court of Tax Appeals. When *Isabela* was promulgated in 2001, Section 7 of Republic Act No. 1125 had yet to be amended by Republic Act No. 9282 to add inactions of the Commissioner as appealable to the Court of Tax Appeals. Moreover, this Court had yet to promulgate *Rizal Commercial Banking Corporation* and *Lascona*, where it was clarified that taxpayers have the option to await the decision of the Commissioner in protests of disputed assessments before they file an appeal with the Court of Tax Appeals.' In other words, in *Isabela*, the taxpayer still had no choice of awaiting the decision of the Commissioner on its protest. This is why in *Isabela*, this Court considered the Final Notice Before Seizure as the Commissioner's decision on the protest. More so because it was the only response Isabela Cultural Corporation received from the Commissioner after it had filed its protest.
>
> Unlike here, where the taxpayer filed an appeal with the Commissioner, no similar appeal was made in *Isabela*. Hence, in *Isabela*, there was no final decision on the appeal by the Commissioner to await, and the Final Notice Before Seizure was correctly deemed the final decision on the protest. To insist that petitioner should have considered the Final Notice Before Seizure or the Warrant of Distraint and/or Levy as the decision appealable to the Court of Tax Appeals En Banc is to deprive petitioner of the remedy of awaiting the decision of the Office of the Commissioner of Internal Revenue on its appeal.
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> ...

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[14] G.R. No. 231238, 20 June 2022; Citations omitted and italics in the original text.

In the cited case of *Commissioner of Internal Revenue v. Isabela Cultural Corporation*[15] (**Isabela**), the taxpayer filed an initial protest to the assessment by way of a request for reconsideration. However, instead of receiving a decision on its protest, a Final Notice Before Seizure (**FNBS**) was immediately issued against it, leading to the interpretation that the FNBS was the CIR's decision appealable to the Court, to wit:

> ...
>
> Indisputably, respondent received an assessment letter dated February 9, 1990, stating that it had delinquent taxes due; and it subsequently filed its motion for reconsideration on March 23, 1990. In support of its request for reconsideration, it sent to the CIR additional documents on April 18, 1990. The next communication respondent received was already the Final Notice Before Seizure dated November 10, 1994.
>
> In the light of the above facts, the Final Notice Before Seizure cannot but be considered as the commissioner's decision disposing of the request for reconsideration filed by respondent, who received no other response to its request. ...
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> ...

In the case at bar, petitioner duly received a decision on its protest to the FLD/FAN which it then appealed to respondent. Thus, following the case of *LRTA*, petitioner has no other option but to await the CIR's action on its appeal (request for reconsideration) and the warrants issued by the ACIR-LTS (subject of this case) cannot be considered the CIR's final decision on the assessment appealable to this Court. Thus, the petition itself cannot be properly considered an appeal under this Court's jurisdiction over "other matters".

Nevertheless, to Our mind, this Court is not completely inutile to grant petitioner the relief it seeks. The issuance of the assailed warrants are still matters covered by the NIRC of 1997, as amended, that falls under this Court's subject matter jurisdiction. Although the Court cannot treat the present petition as an ordinary appeal, the allegations in the petition will reveal that the same may be treated as a petition for *certiorari* under Rule 65 of the Rules of Court (**ROC**), which states:

> ...
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> **Section 1.** *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without

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[15] G.R. No. 135210, 11 July 2001.

> or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.
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> . . .

In the case of *Golden Donuts, Inc. v. Commissioner of Internal Revenue*[16] (**Golden Donuts**), the Supreme Court, citing *City of Manila v. Grecia-Cuerdo (City of Manila)*[17] (**Grecia-Cuerdo**), ruled that the Court of Tax Appeals (**CTA**) has exclusive jurisdiction to resolve all tax problems and it may take cognizance of a petition for *certiorari* to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction committed by the Bureau of Internal Revenue (**BIR**) in issuing a Letter of Authority (**LOA**) against therein taxpayer as well as the subpoena *duces tecum*, to wit:

> . . .
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> In the case of *City of Manila v. Grecia-Cuerdo (City of Manila)*, this Court for the first time recognized the CTA's jurisdiction over petitions for *certiorari* under Rule 65 of the Rules of Court over interlocutory orders issued by the Regional Trial [C]ourt in a local tax case. Thus:
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>> . . . [W]hile there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that **judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law** and that **judicial power includes the duty of the courts of justice** to settle actual controversies involving rights which are legally demandable and enforceable, and **<u>to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government</u>**.
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>> . . .

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16 G.R. No. 252816, 03 February 2021 (Resolution); Citations omitted, italics in the original text, and emphasis and underscoring supplied.

17 G.R. No. 175723, 04 February 2014.

> **Indeed, in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of *certiorari*. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction.** There is no perceivable reason why the transfer should only be considered as partial, not total.
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> . . .
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> Furthermore, **Section 6, Rule 135** of the present Rules of Court **provides that when by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court** or officer.

. . .

> Under Section 7 of R.A. 9282 which expanded the jurisdiction of the CTA, the latter is given exclusive appellate jurisdiction over "Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue." **Following the ruling of the Court in *City of Manila,* the CTA may take cognizance of a petition for *certiorari* to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction committed by the BIR in issuing the 2017 LOA against GDI as well as the subpoena *duces tecum* considering that a previous investigation of the same taxable year 2007 was already conducted pursuant to the 2008 LOA and GDI has already settled its tax liabilities arising out of said investigation.**
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> . . .

Similarly, in the case of *Banco de Oro, et al. v. Republic of the Philippines, et al.*[18] (**BDO**), the Supreme Court echoed its pronouncement in *Grecia-Cuerdo*, where it declared, in no uncertain terms, that petitions for *certiorari* against the acts and omissions of quasi-judicial agencies, including the CIR, on tax-related problems should be filed with the CTA, *viz*:

> . . .
>
> Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, **appeals from the decisions of quasi-judicial agencies (Commissioner of Internal Revenue**, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) **on tax-**

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18 G.R. No. 198756, 16 August 2016 (Resolution); Citations omitted, italics in the original text, and emphasis supplied.

> **related problems must be brought *exclusively* to the Court of Tax Appeals**.
>
> In other words, within the judicial system, **the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of *certiorari* against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals**.
>
> ...

While an ordinary appeal or petition for review and a petition for *certiorari* are distinct legal remedies with different requirements and purposes, a petition for review may be treated as a petition for *certiorari* if it appears from an examination of the allegations and the relief sought therein that it is a petition for *certiorari*. What determines the nature of the action and which court has jurisdiction over it are the allegations of the complaint and the character of the relief sought.[19] The cause of action in a complaint is not what the designation of the complaint states, but what the allegations in the body of the complaint define or describe.[20]

In *Marvin Cruz and Francisco Cruz, in his capacity as Bondsman v. People of the Philippines*[21] (**Cruz**), the Supreme Court explained that the following requisites must be present in order for a petition for *certiorari* to prosper:

> ...
>
> An essential requisite for filing a petition for certiorari is the allegation that the judicial tribunal acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion has been defined as a "capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law." In order to determine whether the Court of Appeals erred in dismissing the Petition for Certiorari for being the wrong remedy, it is necessary to find out whether the Regional Trial Court acted with grave abuse of discretion as to warrant the filing of a petition for certiorari against it.
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> ...

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19 *Patricio A. Villena v. Patricio S. Payoyo*, G.R. No. 163021, 27 April 2007.

20 *Ake Hernudd, et al. v. Lars E. Lofgren, et al.*, G.R. No. 140337, 27 September 2007, citing *Esperanza P. Sumulong, represented by Mario P. Sumulong v. Hon. Court of Appeals and Inland Trailways, Inc.*, G.R. No. 108817, 10 May 1994.

21 G.R. No. 224974. 03 July 2017; Citations omitted.

Here, petitioner alleges in its petition that the ACIR-LTS had no authority to issue the assailed warrants considering that the latter's decision on its assessment is still on appeal with respondent CIR. Therefore, petitioner sees these issuances as a violation of its right to due process. Clearly, the allegations alone depict that the assailed warrants were issued arbitrarily by the ACIR-LTS in excess of his or her jurisdiction considering that the latter should have been aware of the appeal pending before the CIR.

Furthermore, bearing in mind the above discussions, it would seem that there is no other speedy or adequate remedy to prevent the BIR's collection attempts as the Court has already declared that the assailed warrants in this case are not proper subjects of appeal.

Treating the petition now as a petition for *certiorari* under Rule 65 of the ROC, We shall proceed to determine the timeliness of the instant petition and whether the reliefs sought in the instant motion should be granted.

Section 4, Rule 65 of the ROC, as amended, provides thusly:

> ...
> Sec. 4. *When and where to file the petition*. -The petition shall be filed not later than **sixty (60) days from notice of the judgment, order or resolution**. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.[22]
> ...

Pertinently, in the case of *Blue Eagle Management, Inc., et al. v. Jocelyn L. Naval*[23], citing *Isabelita C. Vinuya, et al. v. The Honorable Executive Secretary Alberto G. Romulo, et al.*[24], the Supreme Court emphasized that to establish the timeliness of a petition for *certiorari* under Rule 65, the date of receipt of the assailed judgment, final order, or resolution must be stated in the petition; otherwise, the petition must be dismissed, *viz*:

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22 Emphasis supplied.
23 G.R. No. 192488, 19 April 2016; Citation omitted, italics and emphasis in the original text, and underscoring supplied.
24 G.R. No. 162230, 12 August 2014.

> ...
>
> The Court, in *Vinuya v. Romulo*, expounded on the importance of stating the material dates in a petition for *certiorari*:
>
> > As the rule indicates, the 60-day period starts to run from the date petitioner receives the assailed judgment, final order or resolution, or the denial of the motion for reconsideration or new trial timely filed, whether such motion is required or not. To establish the timeliness of the petition for *certiorari*, the date of receipt of the assailed judgment, final order or resolution or the denial of the motion for reconsideration or new trial must be stated in the petition; otherwise, the petition for *certiorari* must be dismissed. The importance of the dates cannot be understated, for such dates determine the timeliness of the filing of the petition for *certiorari*. As the Court has emphasized in *Tambong v. R. Jorge Development Corporation*:
> >
> > > There are three essential dates that must be stated in a petition for *certiorari* brought under Rule 65. First, the date when notice of the judgment or final order or resolution was received; *second*, when a motion for new trial or reconsideration was filed; and *third*, when notice of the denial thereof was received. **Failure of petitioner to comply with this requirement shall be sufficient ground for the dismissal of the petition. Substantial compliance will not suffice in a matter involving strict observance with the Rules.**
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> ...

Based on the foregoing, all petitions for *certiorari* must be filed not later than sixty (60) days from notice of judgment, order or resolution. Here, petitioner received the WDL and WOG on 15 May 2023 and 23 May 2023, respectively. Subsequently, it filed this petition on 13 June 2023. Clearly, the petition was filed within the 60-day period.

With this Court's jurisdiction over the petition settled, the Court shall determine next whether there exists a valid ground to restrain the BIR from its collection attempts against petitioner.

It will be noted that, as petitioner has alleged, the denial of its protest to the FLD/FAN by the ACIR-LTS was due to the reason that the latter was not the proper officer or office before which such protest may be filed. However, the denial of its protest to the FLD/FAN was appealed before the CIR. Whether the reasons for the denial were proper, the Court is not at liberty to answer or resolve at this time considering that the issue remains pending before the CIR.

As it stands, any ruling of this Court could only be confined to the matter of whether or not the issuance of the assailed warrants was valid; specifically, whether the same was issued with grave abuse of discretion on the part of the ACIR-LTS. On this note, the Court answers in the affirmative.

Owing to the fact that there is a pending appeal before the CIR, the ACIR-LTS' action of issuing the assailed warrants was clearly beyond his or her authority to do. In a way, by issuing the assailed warrants, the ACIR-LTS preempted the CIR's decision by considering his or her decision on the protest to the FLD/FAN final and executory. This is clearly one of the situations sought to be avoided in *LRTA.*[25] Verily, in this situation, following the case of *LRTA,* the taxpayer has the right to await the CIR's action on its Request for Reconsideration. The issuance of the assailed warrants not only deprives petitioner of this right but, it also denies the CIR the opportunity to make his or her own decision or to correct any errors of his or her subordinates.

Obviously, the ACIR-LTS' issuance of the assailed warrants was not only done in excess of his or her jurisdiction but whatever semblance of authority the former had was arbitrarily wielded when it sought to supplant his or her decision in place of a superior officer in the person of the CIR. In effect, to sustain the ACIR-LTS' action will be a direct abrogation of the settled administrative processes ordained in the laws; the NIRC of 1997, as amended, in particular, and the constitutional precepts of due process, in general.

With the foregoing disquisitions, the issuance of the assailed warrants could not only be deemed as premature but also that ACIR-LTS had no authority to issue the same absent the CIR's decision on petitioner's Request for Reconsideration.

The issuance of the assailed warrants having been declared unlawful, the resolution of the instant motion incidentally and necessarily also grants the petitioner's prayer in its Petition for Review[26], which is to render void the subject warrants.[27]

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25 Supra at note 14.
26 Supra at note 3.
27 Id., p.19.

WHEREFORE, the foregoing premises considered, petitioner's Petition for Review, treated as a Petition for *Certiorari* under Rule 65 of the Rules of Court, as amended, filed on 13 June 2023, is hereby **GRANTED** insofar as it prays for the nullification of the assailed warrants. Accordingly, the Warrant of Distraint and/or Levy dated 10 May 2023 and Warrant of Garnishment dated 15 May 2023 are **ANNULLED** and **SET ASIDE.** Consequently, respondent Commissioner of Internal Revenue and his representatives are **ORDERED** to **DESIST** from enforcing any collection measures against petitioner.

Considering the above pronouncement, petitioner's Verified Motion for the Issuance of Preliminary Injunction filed on 04 July 2023 is hereby rendered **MOOT**. Respondent's "Motion with Leave of Court to Admit Attached Comment" filed on 18 July 2023 is **NOTED** without action as the same has been likewise rendered **MOOT.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ON LEAVE
LANEE S. CUI-DAVID
Associate Justice