REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

- **versus** -

**MARKETING CONVERGENCE, INC.,**
Respondent.

**CTA EB NO. 2109**
(CTA Case No. 9301)

Present:

**DEL ROSARIO, *P.J.*,**
**CASTAÑEDA, JR.,**
**UY,**
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA,** *and*
**MODESTO-SAN PEDRO, *JJ.***

Promulgated:
JUN 21 2021 4:05 pm

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# RESOLUTION

***BACORRO-VILLENA, J.:***

For resolution are the following:

(1) Petitioner Commissioner of Internal Revenue's (**petitioner-movant's/CIR**'s) "Motion for Reconsideration"[1] of the Decision dated 03 December 2020 (**First MR**) filed on 28 December 2020, with respondent Marketing Convergence, Inc.'s (**respondent/MCI**'s) "Comment/Opposition (To Petitioner's Motion for Reconsideration Re: Decision dated 03 December 2020)"[2] filed on 26 January 2021; and,

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1 Rollo, pp. 301-307.
2 Id., pp. 339-350.

(2) Petitioner-movant's "Motion for Reconsideration"[3] of the Resolution dated 11 January 2021 (**Second MR**) filed on 28 January 2021[4], with respondent's "Comment/Opposition (To Petitioner's Motion for Reconsideration Re: Resolution dated January 11, 2021)"[5] filed on 15 February 2021.

Petitioner-movant seeks the reconsideration of the 03 December 2020 Decision and the 11 January 2021 Resolution of the Court *En Banc*. The dispositive portions of the assailed Decision and Resolution, respectively, read:

> ...
>
> **WHEREFORE**, premises considered, the instant Petition for Review filed by petitioner Commissioner of Internal Revenue is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated 04 January 2019 and 09 July 2019, respectively, in CTA Case No. 9301, entitled *Marketing Convergence, Inc. v. Commissioner of Internal Revenue*, are hereby **AFFIRMED.**
>
> **SO ORDERED.**[6]
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> ...
>
> **WHEREFORE**, in view of the promulgation of the Court *En Banc*'s Decision dated 03 December 2020, which denied petitioner Commissioner of Internal Revenue's Petition for Review for lack of merit, respondent Marketing Convergence Inc.'s Urgent Motion for Suspension of Collection of Tax is hereby **GRANTED**.
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> Accordingly, petitioner Commissioner of Internal Revenue's Warrant of Distraint and/or Levy No. 116-2020-099 dated 30 November 2020, enforcing the collection of respondent's deficiency taxes, penalties and interests in relation to TY 2020, is hereby **CANCELLED** and **SET ASIDE**.
>
> **SO ORDERED.**[7]
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> ...

In his First MR, petitioner-movant insists that the Court *En Banc* erred in upholding the Court in Division's ruling that the revenue officers (**ROs**) who conducted the examination of respondent were not authorized to do so. Petitioner-movant contends that, based on the

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[3] Id., pp. 351-359.
[4] Received by the Court on 03 February 2021.
[5] Rollo, pp. 361-372.
[6] Assailed Decision dated 03 December 2020, id., pp. 164-181.
[7] Assailed Resolution dated 11 January 2021, id., pp. 312-322.

wordings of Section 13[8] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, a Letter of Authority (**LOA**) applies to examinations conducted by ROs in Revenue District Offices (**RDOs**). As such, petitioner-movant submits that the issuance of an LOA is not necessary when the audit investigation is conducted under the Office of the Commissioner of Internal Revenue (**OCIR**) as it is the CIR's organic function to make assessments pursuant to Section 6(A)[9] of the NIRC of 1997, as amended.

Petitioner-movant adds that the subject LOA was issued by the Chief of the Bureau of Internal Revenue (**BIR**) Large Taxpayers Service Regular Large Taxpayers Audit Division (**LTS-RLTAD**). In the BIR's organizational chart, the LTS is under the OCIR. Since the audit investigation was conducted by the LTS, which is under the OCIR, the issuance of the LOA is no longer a statutory requirement. Petitioner-movant went on to state that the subject LOA was issued merely for the administrative purpose of monitoring the assessments against respondent. The issuance of an LOA thus becomes irrelevant.

On the other hand, respondent counters that petitioner-movant's argument above is grossly misplaced and is bereft of any legal nor logical leg to stand on.

Firstly, a plain reading of the ruling in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*[10] (**Medicard**) leaves little to the imagination on the requirement of a valid LOA in order to empower ROs with authority to examine the books of a taxpayer. Since it is not the CIR himself or his duly authorized representative who conducted the examination of respondent's books, the resulting assessment is inescapably void.

Secondly, the *Medicard* case, which rendered void an assessment without a valid LOA, involved a taxpayer investigated by the Large Taxpayers District Office of Makati (**LTDO-Makati**) which is an office under the LTS's direct supervision. As such, the LTDO-Makati in the

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8 **SEC. 13**. *Authority of a Revenue Officer.* — ...

9 **SEC. 6**. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —

(A) Examination of Returns and Determination of Tax Due. — ...

...

10 G.R. No. 222743, 05 April 2017.

*Medicard* case and the LTS-RLTAD in the instant case are similarly situated in that both are under the OCIR's direct supervision. Respondent thus argues that the supposed special or different treatment for examinations and assessments conducted by offices under the OCIR is nothing but an illusion. Therefore, the subject examinations and assessments in this case are still covered by the overarching requirement of a valid LOA.

Lastly, respondent echoes the Court's finding that, instead of a new LOA pursuant to Revenue Memorandum Order (**RMO**) No. 43-90[11], several Memoranda of Assignment (**MOA**) were issued directing RO Carolyn V. Mendoza (**Mendoza**), *et al.* to continue respondent's audit or examination for TY 2010. Considering that petitioner-movant failed to present in evidence an LOA expressly granting authority to RO Mendoza, *et al.* to examine respondent's records, the said ROs conducted such examination without valid authority. Hence, the resulting assessment is necessarily null and void.

On the other hand, in his Second MR, petitioner-movant argues that respondent's Urgent Motion for Suspension of Collection of Tax (with Motion for Application of Temporary Restraining Order [**TRO**] and Motion to Dispense with Payment of Bond) (**Urgent Motion**) should have been denied because: (1) an injunction to restrain the collection of national internal revenue taxes is prohibited by law as it contravenes Section 218[12] of the NIRC of 1997, as amended; and, (2) respondent failed to establish the essential requisites for the issuance of a writ of preliminary injunction and/or TRO. Particularly for the latter reason, respondent allegedly failed to prove the presence of serious and irreparable injury that would legally justify the suspension of the collection of tax.

Petitioner-movant further contends that this Court erred in dispensing with the requirement of payment of bond in granting petitioner-movant's Urgent Motion. He maintains that pursuant to Section 6, Rule 10 of the Revised Rules of the Court of Tax Appeals (**RRCTA**) payment of the bond is an indispensable requirement for the grant of the motion to suspend collection of tax.

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11 *Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.*

12 **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.

Additionally, petitioner-movant asserts that, since this Court's Special First Division's 04 January 2019 Decision is not yet final and executory, respondent has yet to benefit from the promulgation of the said Decision, including any prohibition against petitioner-movant to resort to summary methods of collection of tax. Thus, petitioner-movant maintains that it cannot at this point be enjoined from resorting to summary methods of collection of tax such as the issuance of a Warrant of Distraint and/or Levy (**WDL**).

Contrary to petitioner-movant's contentions, respondent essentially contends that: (1) the no injunction rule under Section 218[13] of the NIRC of 1997, as amended, is not absolute; (2) it has duly established the essential requisites for the suspension of collection of tax; and, (3) since the collection of the tax itself is not sanctioned by law, the bond requirement is no longer a condition precedent to suspend the tax collection.

Regarding the existence of a permanent and urgent necessity for the suspension of tax collection, respondent also points out that the WDL's execution (for the aggregate amount of ₱1,051,439,244.84) would undoubtedly mean that it could no longer operate as a going concern, aside from the concurrent loss of goodwill and harm to its business reputation.

**We resolve below.**

After a careful consideration of petitioner-movant's arguments, the Court finds no compelling reason or substantial justification to modify or reverse its assailed Decision.

MOTION FOR RECONSIDERATION OF
THE 03 DECEMBER 2020 DECISION

The importance of an LOA empowering an RO to conduct an examination or assessment cannot be overemphasized. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment and, at the same time, it authorizes a designated RO to examine, verify and scrutinize a taxpayer's books and

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13 Supra at note 12.

records, in relation to internal revenue tax liabilities for a particular period.[14]

The Court has thus been consistent in ruling that an RO who is tasked to examine the books of taxpayers must be authorized by an LOA. Otherwise, the assessment for deficiency taxes resulting therefrom is void. Section 6(A) of the NIRC of 1997, as amended, reads:

> ...
>
> **Sec. 6.** *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* -
>
> > (A) *Examination of Returns 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.[15]
>
> ...

Based on the afore-cited provision, only the CIR or his duly authorized representative may authorize the examination of any taxpayer. Therefore, it is crucial that the RO who will carry on the examination must act only upon the authority given either by the CIR himself or his duly authorized representative.

In relation to the foregoing, Section 13[16] of the NIRC of 1997, as amended, likewise requires that before an RO can proceed with the examination or assessment of a taxpayer's books, he must be clothed with authority emanating from an LOA, *viz*:

> ...
>
> **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 Letter of Authority issued by the Revenue**

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[14] *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, 12 July 2017.
[15] Emphasis supplied.
[16] Supra at note 8.

**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.[17]

...

To be valid, an LOA must be issued either by the CIR himself or by his duly authorized representative, who, under Section 13[18] in relation to Section 10(c)[19] of the NIRC of 1997, as amended, is the Revenue Regional Director. In addition to the authority conferred upon a Revenue Regional Director, RMO No. 43-90, likewise provides:

...

4. For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the **Deputy Commissioners** and the Commissioner. For the exigencies of the service, **other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.**[20]

...

Relevantly, RMO No. 29-2007[21] also authorizes the Assistant Commissioner/Head Revenue Executive Assistants to issue LOAs relative to Large Taxpayers.

To summarize the foregoing rules, only the following officials are properly conferred with authority to permit the examination of taxpayers for deficiency taxes:

1. CIR;
2. Regional Directors;
3. Deputy Commissioners;

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17 Emphasis supplied.

18 Supra at note 8.

19 **SEC. 10.** *Revenue Regional Director.* - Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:

...

(c) Issue Letters of Authority for the examination of taxpayers within the region[.]

...

20 Emphasis supplied.

21 Prescribing the Audit Policies, Guidelines and Standards at the Large Taxpayers Service.

4. Assistant Commissioner/Head Revenue Executive Assistants (for Large Taxpayers); and,
5. Other officials but only upon prior authorization by the CIR himself.

As found in the assailed Decision, the ROs named in the LOA[22] were different from those who actually examined respondent's books of account and other accounting records for taxable year (**TY**) 2010. Petitioner-movant, however, rests the authority of those who actually conducted the audit on MOA No. LOA-116-2014-1401[23] and MOA No. LOA-116-2015-1007[24]. Then Chief of LTS-RLTAD, Cesar D. Escalada (**Chief Escalada**) issued both MOAs.

Unfortunately, this Court could not consider the aforementioned MOAs as valid substitutes for the required LOA as RMO No. 43-90[25] expressly requires the issuance of a new LOA in cases of reassignment or transfer of cases to another RO.

RMO No. 43-90, despite its issuance seven (7) years prior to the enactment of the NIRC of 1997, as amended, is still a valid administrative issuance. It was not impliedly repealed by the passage of the NIRC of 1997, as amended, as there exists no irreconcilable inconsistency between their respective provisions, such that they cannot be reconciled or harmonized without nullifying one of them. Likewise, the NIRC of 1997, as amended, does not deal with the particulars on the issuance of an LOA which RMO No. 43-90 supplies. The fact that RMO No. 43-90 is still a valid rule is similarly evident from the recent Supreme Court decisions[26] guided by RMO No. 43-90.

While it may be argued that RMO No. 8-2006[27] sanctions the issuance of an MOA in case of reassignment, it does not readily mean

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22 Exhibit "R-3", BIR Records, p. 526.

23 Division Docket, Volume I, p. 388; Exhibit "R-1", BIR Records, p. 797.

24 Id., p. 389; Exhibit "R-2", id., p. 628.

25 Any reassignment/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.

26 *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, 12 July 2017; *Commissioner of Internal Revenue v. De La Salle University, Inc.*, G.R. No. 196596, 09 November 2016; and, *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, G.R. No. 178697, 17 November 2010.

27 *Prescribing Guidelines and Procedures in the Implementation of the Letter of Authority Monitoring System (LAMS).*
IV. GUIDELINES

that any MOA for that matter shall serve as a valid substitute for the LOA required under Section 13[28] of the NIRC of 1997, as amended. As aptly held in *Commissioner of Internal Revenue v. Composite Materials, Inc.*:[29]

> ...
>
> **As regards the issue on Revenue Officer Mary Anne P. Cruz's (RO Cruz) authority to examine CMI's records, the provisions of the National Internal Revenue Code of 1997, as amended, are clear that a Revenue Officer may only examine the taxpayer's books pursuant to a Letter of Authority (LOA) issued by the Regional Director. This was reiterated by the Court in *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, ruling that in the absence of an LOA, the assessment or examination is a nullity.**
>
> Here, the CTA *en banc* found that the LOA issued in relation to the examination of CMI's book of accounts does not specifically mention the name of RO Cruz. Thus, the examination conducted by RO Cruz and the assessment issued against CMI was correctly declared null and void.
>
> **Moreover, the Court agrees with the CTA *en banc* that the Referral Memorandum issued by a Revenue District Officer directing RO Cruz to continue with the examination of CMI's records is not equivalent to an LOA nor does it cure RO Cruz's lack of authority.** To be sure, Revenue Memorandum Order No. 43-90, which specified the guidelines in the issuance of LOAs states that any reassignment or transfer of cases to another RO or revalidation of an expired LOA shall require the issuance of a new LOA.
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> ...

It is worth noting that the MOAs, subject of this case, were only signed by then LTS-RLTAD Chief Escalada. As such, the said MOAs are *not* compliant with the aforementioned requirements of a valid LOA under Sections 6(A)[30], 10(C)[31] and 13[32] of the NIRC of 1997, as amended,

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To ensure uniformity in the handling of LAs, the following guidelines are given:

...

F. On Disposition of Dockets

...

e. where both the RO and the GS have resigned/retired or transferred to another RR, the case shall be reassigned to another RO under the supervision of another GS within the same RDO

In case of reassignment, a memorandum to that effect shall be issued by the head of the investigating office to the concerned taxpayer and the concerned taxpayer and the concerned RO and/or GS.

28 Supra at note 8.

29 G.R. No. 238352, 12 September 2018; Citations omitted and emphasis supplied.

30 Supra at note 9.

in relation to item D. 4. of RMO No. 43-90[33]. The latter RMO effectively provides that only the Regional Directors, the Deputy Commissioners and petitioner-movant (as the CIR) are authorized to issue an LOA.

Considering that herein subject MOAs were signed only by LTS-RLTAD Chief Escalada, who is not among the listed officials properly conferred with authority to permit the examination of respondent's books, the subject MOAs cannot serve to modify or amend the original LOA.

Certainly, the failure to issue a new LOA specifically naming the new set of ROs who continued the examination of respondent's books is fatal to petitioner-movant's case. As a result, the Court cannot uphold the validity of the subject tax assessments without offending respondent's right to due process.

It is not amiss to emphasize that an LOA is the proof that the person/s named therein is/are authorized to conduct the necessary investigation/audit. It is an express grant of authority hence, absent the necessary issuance of a new LOA specifically naming the person to whom the case will be reassigned with the corresponding annotation *per* RMO No. 43-90, there is no authority to conduct the investigation or audit. Consequently, the assessment is null and void and a void assessment bears no valid fruit.[34]

In fine, We find no cogent reason to deviate from Our previous ruling that indeed, as determined by the Special First Division, the subject tax assessments are void because the ROs who conducted the audit of respondent's books of accounts were not authorized through an LOA.

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[31] Supra at note 19.

[32] Supra at note 8.

[33] D. Preparation and issuance of L/As.

...

4. For the proper monitoring and coordination of the issuance of Letter of Authority, the only BIR officials authorized to issue and sign Letters of Authority are the Regional Directors, the Deputy Commissioners and the Commissioner. For the exigencies of the service, other officials may be authorized to issue and sign Letters of Authority but only upon prior authorization by the Commissioner himself.

[34] *Commissioner of Internal Revenue v. Azucena T. Reyes, Azucena T. Reyes v. Commissioner of Internal Revenue*, G.R. Nos. 159694 and 163581, respectively, 27 January 2006.

MOTION FOR RECONSIDERATION OF
THE 11 JANUARY 2021 RESOLUTION

We likewise find no merit in petitioner-movant's second MR. Nonetheless, for emphasis, We shall pass upon petitioner-movant's arguments.

Contrary to petitioner-movant's contention, it is well-settled that the Court may, by way of exception to Section 218[35] of the NIRC of 1997, as amended, grant an injunction to suspend the collection of taxes. For emphasis, We reproduce portions of Our 11 January 2021 Resolution justifying the said exception to the general rule, to wit:

> ...
>
> Section 11 of Republic Act (**RA**) No. 1125, as amended by RA 9282, embodies the rule that an appeal to the Court of Tax Appeals (**CTA**) from the decision of the Commissioner of Internal Revenue (**CIR**) will not suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law. However, when, in the CTA's view, the collection may jeopardize the interest of the Government and/or the taxpayer, it may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond.
>
> In relation to the foregoing, Revenue Memorandum Order (**RMO**) No. 42-2010, likewise provides that it is only the CTA that has judicial jurisdiction to suspend the collection of taxes but only under certain conditions, that is, when, in its opinion, the collection by the Bureau of Internal Revenue (**BIR**) may jeopardize the interest of the government and/or the taxpayer and which case the CTA may suspend the collection of taxes and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount being assessed.[36]
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> ...

Section 218 of the NIRC of 1997, as amended, merely provides for the general rule that an injunction is not available to restrain the collection of tax. This general rule admits one exception, *i.e.*, when the decision of the CIR is pending appeal before the Court of Tax Appeals (**CTA**), the Court may enjoin the collection of taxes if such collection will jeopardize the interest of the government and/or taxpayer.

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35 Supra at note 12.
36 Citations omitted and emphasis in the original text.

Rule 10 of the RRCTA likewise embodies the general rule and the exception to the suspension of collection of taxes in this wise:

> ...
> **SEC. 1.** *No suspension of collection of tax, except as herein prescribed.* — No appeal taken to the Court shall suspend the payment, levy, distraint, or sale of any property of the taxpayer for the satisfaction of his tax liability as provided under existing laws, except as hereinafter prescribed.
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> **SEC. 2.** *Who may file.* — Where the collection of the amount of the taxpayer's liability, sought by means of a demand for payment, by levy, distraint or sale of any property of the taxpayer, or by whatever means, as provided under existing laws, may jeopardize the interest of the Government or the taxpayer, an interested party may file a motion for the suspension of the collection of the tax liability.
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> **SEC. 3.** *When to file.* - The motion for the suspension of the collection of the tax may be filed together with the petition for review or with the answer, or in a separate motion filed by the interested party at any stage of the proceedings.
> ...

Based on the foregoing provisions, this Court, at any stage of the proceedings, is authorized by law and applicable rules to suspend tax collection if, in its opinion, such collection may jeopardize the interest of the Government and/or the taxpayer, subject to the filing of a motion by an interested party. Clearly, in herein case, the issuance of an injunction or suspension order is not prohibited but instead covered by the exception provided by law.

We also disagree with petitioner-movant's contention that respondent failed to establish the requisites for the issuance of a suspension order. As We have explained in Our 11 January 2021 Resolution, respondent has adequately established such requisites, *viz*:

> ...
> The requisites for the issuance of the said relief must be present, to wit: (1) the existence of a clear and unmistakable right that must be protected; and, (2) an urgent and paramount necessity for the writ to prevent serious damage. To thus grant injunctive relief to respondent, particularly an order of suspension to collect tax, respondent must have shown the urgency, and the imminent and irreparable damage that may result if the complained act of petitioner is not enjoined.

As to the first requisite, respondent has very well established that it has a right to due process having already obtained favorable decisions from both the Court *En Banc* and the Court's Special First Division, nullifying and setting aside the subject tax assessments.

As to the second requisite, respondent has likewise shown that the act sought to be enjoined is imminent because the BIR has already issued and served a WDL against it. As a result, respondent stands to sustain serious and irreparable damage due to the implementation of the WDL as the seizing of its personal and real properties *via* distraint and/or levy would adversely affect the running of its business.

Respondent also avers that its cash and overall available resources are grossly insufficient to cover the alleged deficiency taxes. In support thereof, respondent submitted a copy of its 2019 Audited Financial Statements[37], which shows that its total assets amount only to ₱2,890,581,891.00, of which only ₱10,762,860.00 represents cash, and its total liabilities amounting to ₱2,716,472,649.00.

Further, respondent claims that, should the WDL be enforced, it would have to stop its operations, or worse, close its business. Aside from losing funds intended for its working capital requirements and property devoted to its day-to-day operations, the implementation of the WDL would also adversely affect its goodwill, in which case, its clients may start to question its integrity. Such injury to the respondent's reputation is incapable of pecuniary estimation.

Consequently, respondent finds itself in a precarious situation wherein, even after securing a favorable decision from the Court *En Banc* which upheld the Court's Special First Division's ruling that declared the subject tax assessments void, it still has to deal with the impending threat of a grave and irreparable injury due to the implementation of petitioner's WDL.

With the foregoing, respondent has shown to the satisfaction of this Court that there is urgent and paramount necessity for the issuance of a suspension of collection of the alleged tax liabilities of respondent.

...

Notably, other than his bare allegation that respondent failed to prove the presence of serious and irreparable injury, petitioner-movant did not present specific and convincing argument to overcome Our

[37] Annex "B", Rollo, pp. 204-268.

finding above that respondent has in fact duly established the requisites for the issuance of a suspension order.

Additionally, We find that petitioner-movant's issuance of a WDL is premature as the deficiency tax assessments subject of collection are not yet delinquent. Under Section 205[38] of the NIRC, as amended, the civil remedies for collection of taxes can only be employed once the taxes have become delinquent. Hence, before petitioner-movant can avail of the civil collection remedies provided therein, it must first be established that the deficiency tax assessments which are the subject of collection have become delinquent.

Under Revenue Regulations (**RR**) No. 4-19[39], a tax becomes delinquent when the deficiency tax assessment has become final and executory, to wit:

> ...
> A. Delinquent Account — shall pertain to a tax due from a taxpayer arising from the audit of the Bureau of Internal Revenue (BIR) which had been issued Assessment Notices that have become final and executory due to the following instances:
>
> 1. Failure to pay the tax due on the prescribed due date provided in the Final Assessment Notice (FAN)/Formal Letter of Demand (FLD) and for which no valid Protest, whether a request for reconsideration or reinvestigation, has been filed within thirty (30) days from receipt thereof;
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> 2. Failure to file an appeal to the Court of Tax Appeal (CTA) or an administrative appeal before the Commissioner of Internal Revenue (CIR) within thirty (30) days from receipt of the decision denying the request for reinvestigation or reconsideration; or
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> 3. Failure to file an appeal to the CTA within thirty (30) days from receipt of the Decision of the CIR denying the taxpayer's administrative appeal to the Final Decision on Disputed Assessment (FDDA).
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> ...

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38 **SEC. 205.** *Remedies for the Collection of Delinquent Taxes.* — ...

39 *Implementing Rules and Regulations of Republic Act No. 11213, Otherwise Known as the "Tax Amnesty Act", Providing for the Guidelines on the Processing of Tax Amnesty Application on Tax Delinquencies.*

Consistent with the afore-cited regulation, a tax becomes delinquent when a taxpayer: (1) fails to pay the tax due in a Final Assessment Notice (**FAN**)/Formal Letter of Demand (**FLD**) which has not been protested, whether for reconsideration or reinvestigation, within thirty (30) days from receipt thereof; (2) fails to file an appeal before this Court or an administrative appeal before petitioner-movant within 30 days from receipt of the denial of the request for reconsideration or reinvestigation; and, (3) fails to file an appeal before this Court within 30 days from receipt of petitioner-movant's denial of the administrative appeal.

None of the foregoing instances are present in this case. As borne out by the records, respondent duly filed a Protest[40] to the FLD/FAN[41] subject of the instant case. After Officer in Charge-Assistant Commissioner for Large Taxpayers Service Nestor S. Valeroso (**OIC-ACIR Valeroso**) denied respondent's Protest in part, through the Final Decision on Disputed Assessment (**FDDA**) dated 09 November 2015[42], respondent timely filed a Motion for Reconsideration[43] (**MR**) before the office of petitioner-movant, then BIR Commissioner Kim S. Jacinto-Henares (**Commissioner Henares**). Finally, when Commissioner Henares denied respondent's MR, through the Letter dated 11 February 2016[44], respondent timely filed its Petition for Review[45] before the Court in Division. Hence, the deficiency tax assessments under the FLD/FAN are not yet delinquent. There was thus no legal basis for petitioner-movant to issue the subject WDL or any other summary remedy for collection of delinquent taxes.

Lastly, as to the bond requirement, it is no longer necessary for respondent to deposit or file a bond as a condition precedent to suspend the tax collection given that the collection of the tax itself is not sanctioned by law, applying the ruling in *Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao v. The Court of Tax Appeals – First Division and The Commissioner of Internal Revenue*.[46] Specifically, since

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40 Exhibit "P-7", Division Docket, Volume III, pp. 1412-1465.
41 Exhibit "P-6", id., pp. 1394-1411; Exhibits "R-16", "R-17" and "R-17-1" to "R-17-4", BIR Records, pp. 614-623.
42 Received by respondent on 12 November 2015, Exhibit "P-8", id., pp. 1466-1475; Exhibit "R-19", id., pp. 219-225.
43 Filed on 14 December 2015 as 12 December 2015 is a Saturday, Exhibit "P-9", id., pp. 1476-1508.
44 Received by respondent on 17 February 2016, Exhibit "P-10", id., p. 1509; Exhibit "R-22", BIR Records, p. 249.
45 Filed on 18 March 2016, id., Volume I, pp. 10-55.
46 G.R. No. 213394, 06 April 2016.

the subject tax assessments are void for lack of a valid LOA, it necessarily follows that petitioner-movant's WDL is void, and therefore, cannot be enforced against respondent.

Furthermore, We cannot subscribe to petitioner-movant's argument that he cannot be enjoined from resorting to summary methods of collection of tax simply because the Court's Special First Division's 04 January 2019 Decision has yet to become final and executory.

Notwithstanding that the Court's Special First Division's 04 January 2019 Decision as well as this Court's 03 December 2020 Decision are not yet final and executory, We reiterate that both the law and applicable rules empower this Court to suspend the collection of the taxes as discussed above. To be clear, respondent ought to benefit from such suspension order pending the finality of this Court's 03 December 2020 Decision in its favor. Had the Court refused to cancel respondent's WDL, the latter would have rendered nugatory the Court's Special First Division's 04 January 2019 Decision and preempted this Court's 03 December 2020 Decision both finding the subject tax assessments void.

**WHEREFORE**, premises considered, petitioner Commissioner of Internal Revenue's "Motion for Reconsideration" of the Decision dated 03 December 2020 filed on 28 December 2020 and "Motion for Reconsideration" of the Resolution dated 11 January 2021 filed on 28 January 2021 are hereby **DENIED** for lack of merit. Accordingly, the Court *En Banc*'s 03 December 2020 Decision and 11 January 2021 Resolution are hereby **AFFIRMED**.

**SO ORDERED.**

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

*Juanito C. Castañeda, Jr.*
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice