REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

ST. TIMOTHY CONSTRUCTION CORPORATION, ST. MATTHEW GEN. CONTRACTOR & DEVELOPMENT CORPORATION, ALPHA & OMEGA CONTRACTOR & DEVELOPMENT CORPORATION, ST. GERRARD CONSTRUCTION GEN. CONTRACTOR & DEVELOPMENT CORPORATION, and PACIFICO F. DISCAYA II,
Petitioners,

- versus -

BUREAU OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10472

Members:

BACORRO-VILLENA, *Acting Chairperson, and,*
CUI-DAVID, *JJ.*

Promulgated:

NOV 03 2022

10:51 a.m.

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DECISION

CUI-DAVID, J.:

Before the Court is a Petition for Review[1] under Rule 65 of the Revised Rules of Court, assailing the response letters (assailed Resolution)[2] issued by respondent, denying petitioners' respective requests for cancellation of the Letters of Authority (LOAs) issued to them.

[1] Docket, pp. 7-26.
[2] *Id.*, pp. 98-109.

THE PARTIES[3]

Petitioner Pacifico F. Discaya II, of legal age, is the proprietor of St. Gerrard Construction with office address at No. 35 Tatco Compound, Jacinto Street, Malinao, Pasig City.

The other petitioners are all domestic corporations, duly organized and existing under and by virtue of the laws of the Philippines, with office addresses and authorized representatives, as shown below:

	Taxpayer	Address	Authorized Representative
1	St. Timothy Construction Corporation	35 Tatco Compound, Jacinto Street, Malinao, Pasig City	Ma. Roma Angeline Rimado
2	St. Matthew Gen. Contractor & Development Corp.	35 Tatco Compound, Jacinto Street, Malinao, Pasig City	Darryl Mark Pesigan
3	Alpha & Omega Contractor & Development Corp.	35 Tatco Compound, Jacinto Street, Malinao, Pasig City	Cezarah Rowena Discaya
4	St. Gerrard Construction Gen. Contractor & Development Corp.	35 Tatco Compound, Jacinto Street, Malinao, Pasig City	Pacifico Discaya II

Respondent, on the other hand, is the government agency charged with, among other powers and duties, the assessment and collection of all national internal revenue taxes as well as deciding disputed assessments and other matters arising under the National Internal Revenue Code (NIRC/Tax Code) of 1997, as amended, and other laws administered by respondent, with office address at the Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

Petitioners aver in their Petition for Review that they received the following LOAs from respondent:

[3] Petition for Review, docket, pp. 9-10.

	Taxpayer	LOA No/SN	Date	Taxable Year	Tax Type	Investigating Office
1	St. Timothy Construction Corporation	eLA2016 000029 52 LOA-043-2018-000004 40[4]	13 July 2018	01 January 2017 – 31 December 2017	All internal revenue taxes including documentary stamp tax (DS), other taxes (miscellaneous tax) (OTH)	RD RR No. 7 - Quezon City RDO - 043
2	St. Timothy Construction Corporation	eLA2017 000398 10 LOA-043-2019-000012 61[5]	29 November 2019	01 January 2018 – 31 December 2018	All internal revenue taxes except for Value Added Tax, including documentary stamp tax (DS)	RD RR7B East NCR RDO 043 - Pasig
3	St. Matthew Gen. Contractor & Development Corp.	eLA2017 000397 81 LOA-043-2019-000012 615[6]	28 November 2019	01 January 2018 – 31 December 2018	All internal revenue taxes including documentary stamp tax (DS), other taxes (miscellaneous tax) (OTH)	RD RR7B East NCR RDO 043 - Pasig
4	Alpha & Omega Contractor & Development Corp.	eLA2016 000023 81 LOA-043-2017-000007 86[7] eLA2017 000400 88 LOA-043-2020-000002 55[8]	04 December 2019 28 August 2020	01 January 2016 – 31 December 2016 01 January 2016 – 31 December 2016	All internal revenue taxes including documentary stamp tax (DS), other taxes (miscellaneous tax) (OTH)	RD RR7B East NCR RDO 043 - Pasig
5	St. Gerrard Construction Gen. Contractor & Development Corporation	eLA2017 000397 80 LOA-043-2019-000012 40	28 November 2019	01 January 2018 – 31 December 2018	All internal revenue taxes except for Value Added Tax, including documentary stamp tax (DS)	RD RR7B East NCR RDO 043 - Pasig
6	Pacifico F. Discaya II	eLA2016 000029 34	18 July 2018	01 January 2018 – 31 December 2018	All internal revenue taxes except for Value Added Tax, including	RD RR7 Quezon City RDO 043 - Pasig

[4] Docket, p. 46.
[5] Docket, p. 47.
[6] Docket, p. 48.
[7] Docket, p. 51.
[8] Docket, p. 50.

		LOA-043-2018-000000410[9]			documentary stamp tax (DS)	

The above LOAs were allegedly issued under Section 6(A)[10] and Section 10(c)[11] of the NIRC of 1997, as amended.

On October 26, 2020, believing that the LOAs were irregularly issued, petitioners individually filed their *Request for LOA Cancellation*[12] with respondent.

There being no reply, and to afford respondent another opportunity to correct its alleged erroneous issuance of the subject LOAs, petitioners filed their respective *Very Last Opportunity Notice Before Suits (LOA Cancellation)*[13] with respondent on November 5, 2020.

On December 26, 2020, petitioners received respondent's response letters,[14] denying their requests for LOA cancellation with finality.

Claiming that respondent's replies/responses to their requests are already final, petitioners filed the instant *Petition for Review* before the Court on February 22, 2021.

In its *Answer*[15] filed within the extension[16] period given, respondent interposed the following Special and Affirmative Defenses:

1) The Honorable Court has no jurisdiction over the Petition filed by petitioners.

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[9] Docket, p. 52.

[10] 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.

...

[11] 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; ...

[12] Docket, pp. 53-57; 61-65; 69-73; 77-79; 83-87; 94-97.

[13] Docket, pp. 58-60; 66-68; 74-76; 80-82; 88-90; 91-93.

[14] Docket, pp. 98-109.

[15] Docket, pp. 117-125.

[16] Docket, p. 115.

2) Petitioners failed to state the cause of action in the Petition for Review; and

3) Annual Audit Program is not a condition precedent for the issuance of the LOA.

On May 28, 2021, a *Notice of Pre-Trial Conference*[17] was issued notifying the parties of the pre-trial conference. In addition, the parties were ordered to file with the Court and serve on the adverse party at least three (3) days before the date of pre-trial their respective pre-trial briefs.

In compliance, petitioners filed their *Pre-Trial Brief*[18] on July 28, 2021, while respondent, instead of filing its pre-trial brief, filed an *Omnibus Motion for the Postponement of the Pre-Trial Conference and for the Setting of the Case for Hearing or for the Submission of Memorandum (Omnibus Motion)*[19] on even date.

On September 29, 2021, the Court, acting on respondent's *Omnibus Motion,* declared respondent's plea for the postponement of the pre-trial conference moot and academic, given the Administrative Circular No. 56-2021 dated July 30, 2021, ordering the physical closure of all court and judicial offices from August 2, 2021, to August 20, 2021. Anent respondent's *Motion* for the filing of memorandum, the same is granted instead of a hearing. Hence, the parties were given thirty (30) days from notice to file their respective memoranda.[20]

On November 10, petitioners filed their Memorandum,[21] while respondent filed its own[22] through registered mail on November 25, 2021 and received by the Court on December 21, 2021.

After filing the parties' respective memoranda, the case was submitted for decision on January 12, 2022.

Hence, this decision.

[17] Docket, pp. 126.
[18] Docket, pp. 127-136.
[19] Docket, pp. 133-136.
[20] Resolution, docket, pp. 138-139.
[21] Docket, pp. 144-161.
[22] Docket, pp. 165-180.

THE ISSUES

Petitioners submitted the following issues for this Court's resolution:[23]

I. Petition for *Certiorari* under Section 1, Rule 65 of the Revised Rules of Court, filed with the Court of Tax Appeals is the correct remedy.

II. Respondent acted with grave abuse of discretion amounting to lack or excess of its jurisdiction when it issued the Letters of Authority (LOAs) to petitioners, being contrary to the provisions of the Tax Code and other related laws.

III. Respondent committed an error of law when it issued its response to petitioners' request to cancel the Letters of Authority (LOAs) stating that it is the "final resolution on the matter" and that "inquiries involving the same facts and issues will no longer be entertained."

IV. Petitioners have no other plain, speedy and adequate remedy in the ordinary course of law; thus this Petition for *Certiorari*.

***Petitioners' arguments*:**

Petitioners submit that Petition for *Certiorari* under Section 1, Rule 65 of the Revised Rules of Court, filed with the Court of Tax Appeals (CTA) is the correct remedy as the CTA's jurisdiction is not limited to cases that involve decisions of the Commissioner on Internal Revenue (CIR) on matters involving assessments or refunds but also covers other cases arising from the NIRC of 1997, as amended. According to petitioners, the denial of their requests for LOA cancellation is a decision of the CIR arising under the NIRC and its related laws. Citing the Supreme Court ruling in *DOTR v. PPSTA,*[24] petitioners submit that the judicial power to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of respondent is vested with the CTA.

[23] Memorandum for Petitioners, docket, p. 146.
[24] G.R. No. 230107, July 24, 2018.

Moving on, petitioners assert that respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the LOAs to them. Allegedly, the "*law has not been observed*" by respondent in the issuance of the subject LOAs. Revenue Memorandum Order (RMO) No. 44-2010 provides that "*The basis for the audit (i.e., regular audit program, special audit, etc.) shall be reflected in the Letter of Authority.*" Further, Revenue Administrative Order (RAO) No. 3-2014 provides that the Revenue District Officer (RDO) has the ministerial duty to "*prepare a list of taxpayers recommended for audit based on audit program prescribed by the National Office (NO).*" However, despite several demands, respondent failed to state the basis for the audit in the LOAs given to them.

Petitioners theorize that respondent's failure and/or refusal to state the audit program on the face of the subject LOAs is due to the non-existence of such audit program prescribed by the National Office, which is supposed to be the basis for the LOA. Since there is no audit program, there can be no criteria from where a list of taxpayers can be generated for audit. When they pointed out these glaring deficiencies in the LOAs, respondent allegedly sent its response letters putting to rest the controversy by citing Revenue Memorandum Circular (RMC) No. 6-13, which provides that "*(i)n the absence of an annual audit program, the Commissioner has the authority to make assessments*", and added that he will no longer entertain any more inquiries on the "same facts and issues."

For petitioners, an LOA is an authority given to the appropriate revenue officer to examine the books of accounts and other accounting records of a taxpayer. It commences the audit process by informing the taxpayer that he is under audit for possible deficiency tax assessment.[25] While they are not disputing the power of the Commissioner of Internal Revenue to authorize the examination of any taxpayer and that of the Revenue Regional Director (RRD) to issue LOAs for the examination of any taxpayer within the region, petitioners submit that this power is not absolute and infinite because "it is a requirement in all democratic regimes that it is exercised reasonably and in accordance with the prescribed procedures."[26]

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[25] *CIR v. DLSU, Inc.*, G.R. Nos. 196596, 198841 and 189841, November 9, 2016.
[26] *CIR v. Algue*, G.R. No. L-28896, February 17, 1988.

Petitioners likewise submit that respondent committed an error of law in its response to their request to cancel the LOAs when it stated that the same is its "final resolution on the matter" and that any "inquiries involving the same facts and issues will no longer be entertained." According to petitioners, respondent's baseless conclusion, to wit:

> Based on the foregoing provisions, an annual audit program is not a condition precedent for the issuance of the LOA. The LOA can still be issued despite the absence of an annual audit program and the validity of the same cannot be defeated by mere allegations, general statements or conclusions of law. Hence, the LOA in this case was issued in the ordinary and regular course of business and thus valid and binding.

was premised on Sections 6(A) and 10(C) of the National Internal Revenue Code (1997) of 1997, as amended.

However, petitioners submit that nothing in the said provisions of the law justifies such a conclusion. For them, if anyone has resorted to "mere allegations, general statements or conclusions of law," it is none other than respondent as it allegedly disregarded its issuances which provide the bases and procedures for an audit or investigation of a taxpayer. While it is true that respondent has the power to amend, modify or alter its issuances, such power must be exercised fairly and in observance of the law.

Lastly, petitioners submit that they filed the instant Petition for *Certiorari* as they have no other plain, speedy and adequate remedy in the ordinary course of law. According to petitioners, they are in a vulnerable position when confronted with LOAs, the bases of which they have no idea because respondent refused to divulge such information. Petitioners also have personal and substantial interests in the matter of the cancellation of the LOAs as they will sustain direct injury should respondent pursue its enforcement bereft of any guidelines in their implementation. In the face of respondent's response to their request for LOA cancellation, petitioners believe that respondent can proceed to audit their tax records unless they can seek a judicial determination by way of *certiorari* as to whether the actions of respondent constitute grave abuse of discretion amounting to lack of jurisdiction.

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Respondent's counter-arguments:

For his part, respondent argues that the Court has no jurisdiction over the instant *Petition*. According to respondent, the filing of the *Petition for Review* under Section 1, Rule 65 of the Revised Rules of Court should be outrightly dismissed. Respondent explains that the power of the Commissioner of Internal Revenue to make assessments and prescribe additional requirements for tax administration and enforcement, *i.e.*, issuance of LOA, are neither judicial nor quasi-judicial in nature. Respondent does not perform adjudicatory functions such that its awards determine the parties' rights, and their decisions have the same effect as court judgment. Further, a quasi-judicial function is a term that applies to the action, discretion, *etc.* of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of judicial nature.[27]

According to respondent, it did not act nor perform quasi-judicial functions when it denied the request of petitioners to cancel the LOAs issued to them. Respondent is simply performing one of its powers under the NIRC of 1997, as amended, which is to make assessments and prescribe additional tax administration and enforcement requirements.

Respondent also disagrees with petitioners' assertion that it acted with grave abuse of discretion amounting to lack of jurisdiction in issuing the subject LOAs. In the case of *G.V. Florida Transport, Inc. v. Tiara Commercial Corporation (G.V. Florida),* [28] the Supreme Court held that grave abuse of discretion has a precise meaning in remedial law. It is not mere abuse of discretion but must be grave "as when the power is exercised in an arbitrary or despotic manner because of passion or personal hostility and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." In more concrete terms, not every error a tribunal commits amounts to grave abuse of discretion. A misappreciation of the facts or misapplication of the law does not warrant the filing of special civil action for certiorari. There must be a clear abuse of the authority vested in a tribunal. This abuse must be so

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[27] *Bangko Sentral ng Pilipinas v. Philippine Veterans Bank*, G.R. No. 189571, January 21, 2015.
[28] G.R. No. 201378, October 18, 2017.

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serious and so grave that it warrants the interference of the court to nullify or modify the challenged action and to undo the damage done.

Here, petitioners fell short in presenting even a single piece of evidence other than their capricious and whimsical allegations that respondent acted with grave abuse of discretion and used its power in an arbitrary or despotic manner against petitioners when it denied their requests to cancel the LOAs issued to them.

In addition to Rule 65 of the Revised Rules of Court, petitioners also anchored their *Petition for Review* to Section 4, Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA). According to respondent, this mode would not merit petitioners' *Petition* since the assailed response letters do not involve rulings on disputed assessments or claim for refunds of erroneously paid/collected internal revenue taxes.

Another defect of the *Petition for Review* is that *Certiorari* under Rule 65 and *Petition for Review* under Rule 42 of the Revised Rules of Court are mutually exclusive, not alternative.[29]

Respondent further argues that the Court of Tax Appeals (CTA), being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction. According to respondent, the relief sought by petitioners is not among those actions under the jurisdiction of the CTA, which is to prevent respondent from exercising its official mandate. Respondent stresses that the decision contemplated in the law is rendered on a disputed assessment. Thus, it is primordial that the assessment is disputed first. In the instant case, there is no assessment yet as respondent has yet to commence an audit/examination with the issuance of the LOAs.

Also, respondent submits that being the government agency lawfully mandated by the NIRC of 1997, as amended, to collect taxes and conduct the necessary investigation to fulfill such mandate, resorting to the Court before the conclusion of an actual investigation is premature and speculative. Citing the Supreme Court's ruling in *PAGCOR v. BIR*, [30] respondent emphasizes that an action prematurely brought before the court is groundless and should be dismissed.

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[29] *Butuan Development Corporation* v. CA, G.R. No. 197358, April 5, 2017.
[30] G.R. No. 208731, January 27, 2016.

Respondent likewise argues that the *Petition for Review* should be dismissed for failure to state cause of action. According to respondent, the three elements of a cause of action are absent from the facts averred by the petitioners. First, petitioners have no right under the NIRC of 1997, as amended, or under existing rules and regulations to question and seek to cancel the issuance of LOAs. Second, petitioners' rights were not violated when respondent issued the LOAs. Lastly, there is neither an act nor omission on the part of respondent violative of petitioners' rights. Respondent's issuance of the LOAs is within its power and authority under the NIRC of 1997, as amended, and other existing rules and regulations.

Finally, respondent submits that the petitioners' allegations that he failed to state the basis for the audit in the LOA and failed to state the audit program on the face of the said LOA have no leg to stand on. Citing Revenue Memorandum Circular (RMC) No. 06-2013, which was allegedly issued to clarify the taxpayers' concerns on the audit program of the BIR, respondent counters that an annual audit program is not a condition precedent for the issuance of the LOA. According to respondent, an LOA can still be issued despite the absence of an annual audit program. The validity of the same cannot be defeated by mere allegations, general statements, or conclusions of law. More, Revenue Memorandum Order (RMO) No. 19-2015, which is the existing BIR Audit Program, prescribes the policies, guidelines, and procedures to be observed in the audit/investigation of tax returns. The issuance and publication of RMO No. 19-2015 need not be indicated on the face of the LOA as being mandated by petitioners.

THE COURT'S RULING

The Court finds the Petition bereft of merit.

The CTA has jurisdiction over petitions for certiorari under Rule 65 of the Rules of Court.

Settled is the rule that what determines the nature of the action and which court has jurisdiction over it are the allegations in the complaint and the character of the relief sought.[31]

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[31] *Villena v. Payoyo*, G.R. No. 163021, April 27, 2007, 522 SCRA 592.

The cause of action in a complaint is not determined by the designation given to it by the parties. The allegations in the body of the complaint define or describe it. The designation or caption is not controlling more than the allegations in the complaint.[32] Basic as a hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint, which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The averments in the complaint and the character of the relief sought are the ones to be consulted.[33]

The instant *Petition* is captioned "*Petition for Review*." However, an examination of the "Nature of Petition," the "Timeliness of Filing and Material Dates," petitioners' grounds, arguments, and the relief sought, reveals that it is a Petition for *Certiorari* anchored on respondent's issuance of the "assailed Resolutions" which denied petitioners' requests for the cancellation of the LOAs. Allegedly, respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the LOAs to each petitioner, contrary to the provisions of the Tax Code and other related laws; and that the reliefs sought by petitioners are in accord with the nature of their Petition for *Certiorari*, to wit:

1. Declaring that respondent has acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the following Letters of Authority to petitioners: *xxx*

2. Declaring that the aforementioned Letters of Authority are void for being issued in contravention of the NIRC and its related laws,

3. Ordering Respondent to cancel said Letters of Authority, and

4. Granting such other relief, just and equitable under the foregoing premises.

Given the foregoing, the Court deems it proper and justified to *relax* the rules and, therefore, treat the *Petition for Review* herein filed as a Petition for *Certiorari*.

We shall first discuss the basis of the CTA's *certiorari* power, considering the repeated assertion[34] of respondent that this Court has no jurisdiction over the Petition.

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[32] *Hernudd v. Lofgren*, G.R. No. 140337, September 27, 2007, 534 SCRA 205.
[33] *Editha Padlan v. Elenita Dinglasan and Felicisimo Dinglasan*, G.R. No. 180321, March 20, 2013.
[34] Answer, paragraphs 7-20, docket, pp. 118-120; Memorandum (For Respondent), docket, pp. 166-176.

The CTA's power of judicial review is sanctioned clearly in Section 1, Article VIII of the 1987 Constitution, which reads:

> Section 1. The judicial power shall be vested in one Supreme Court and in such **lower courts** as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and **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. (*Emphasis supplied*)

In 2004, with the enactment of Republic Act No. (RA) 9282,[35] the jurisdiction of the CTA was expanded and its rank elevated to the level of a collegiate court with special jurisdiction and possessing all the inherent powers of a Court of Justice:

> Section 1 of Republic Act No. 1125, as amended, is hereby further amended to read as follows:
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> SECTION 1. *Court; Justices; Qualifications; Salary; Tenure.* — **There is hereby created a Court of Tax Appeals (CTA) which shall be of the same level as the Court of Appeals, possessing all the inherent powers of a Court of Justice**, and shall consist of a Presiding Justice and five (5)[36] Associate Justices. (*Emphasis supplied*)

Relevantly, in the case of *City of Manila v. Grecia-Cuerdo (Grecia-Cuerdo),*[37] the Supreme Court, for the *first time*, explicitly recognized the CTA's jurisdiction over petitions for *certiorari* under Rule 65 of the Rules of Court involving an interlocutory order issued by the Regional Trial Court in a local tax case, to wit:

> The foregoing notwithstanding, while 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

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[35] 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, effective April 23, 2004.
[36] Now eight (8) Associate Justices, under Republic Act No. 9503, AN ACT ENLARGING THE ORGANIZATIONAL STRUCTURE OF THE COURT OF TAX APPEALS, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.
[37] G.R. No. 175723, February 4, 2014.

demandable and enforceable, and 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.

On the strength of the above constitutional provisions, it can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in these cases.

Indeed, for any appellate court to effectively exercise its 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.

Consistent with the above pronouncement, this Court has held as early as the case of *J.M. Tuason & Co., Inc. v. Jaramillo, et al.* that "*if a case may be appealed to a particular court or judicial tribunal or body, then said court or judicial tribunal or body has jurisdiction to issue the extraordinary writ of certiorari, in aid of its appellate jurisdiction.*" This principle was affirmed in *De Jesus v. Court of Appeals*, where the Court stated that "*a court may issue a writ of certiorari in aid of its appellate jurisdiction if said court has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the lower court.*" The rulings in *J.M. Tuason* and *De Jesus* were reiterated in the more recent cases of *Galang, Jr. v. Geronimo and Bulilis v. Nuez.*

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. (*Citations omitted*)

Echoing its pronouncement in *Grecia-Cuerdo* that the CTA has the power of *certiorari* within its appellate jurisdiction, the Supreme Court, in the case of *Banco de Oro v. Republic of the Philippines (Banco de Oro)*,[38] declared in no uncertain terms that petitions for *certiorari* against the acts and omissions of quasi-

[38] G.R. No. 198756, August 16, 2016.

judicial agencies, *i.e.*, Commissioner of Internal Revenue, 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**[39] (**Commissioner of Internal Revenue**, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-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 <u>writs of certiorari</u> against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.**[40] (*Emphasis supplied*)

Recently, in *Golden Donuts, Inc. v. Commissioner of Internal Revenue (GDI)*,[41] the Supreme Court explicitly declared that 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 a *LOA* against *GDI*, *viz.*:

> Under Section 7 of RA No. 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 Code or other laws administered by the Bureau of Internal Revenue." Following the ruling of the Court in [*Grecia-Cuerdo*], **the CTA may take cognizance of a <u>petition for *certiorari*</u> to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction committed by the BIR in <u>issuing the 2017 LOA</u>** 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

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[39] *Id*, citing *Metro Construction, Inc. v. Chatham Properties, Inc.*, 418 Phil. 176, 202-203 (2001) [Per C.J. Davide, Jr., First Division]: "A quasi-judicial agency or body has been defined as an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making. The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts."

[40] We apply by analogy the ruling in *National Water Resources Board v. A. L. Ang Network, Inc.*, 632 Phil. 22, 28-29 (2010) [Per J. Carpio Morales, First Division], which states that "[s]ince the appellate court has exclusive appellate jurisdiction over quasi-judicial agencies under Rule 43 of the Rules of Court, petitions for writs of certiorari, prohibition or mandamus against the acts and omissions of quasi- judicial agencies, like petitioner, should be filed with it."

[41] G.R. No. 252816, February 3, 2021.

> has already settled its liabilities arising out of the said investigation. (*Emphases supplied*)

Following the foregoing, the CTA has the power of *certiorari* in cases within its appellate jurisdiction. Thus, it is vested with jurisdiction to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the BIR in issuing the "assailed Resolutions" and the subject LOAs against petitioners.

We shall now proceed to determine the merit of the Petition.

Petitioners failed to satisfy the essential requisites for a Petition for Certiorari.

Section 1, Rule 65 of the Revised Rules of Court, provides that:

> Section 1. *Petition for certiorari.* - When any tribunal, board or officer exercising judicial or quasi-judicial functions **has acted without or in excess of 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. (la) (*Emphasis supplied*)

In essence, for a petition for *certiorari* to prosper, the following *essential* requisites[42] must concur:

1. The writ is directed against a tribunal, a board, or any officer exercising *judicial or quasi-judicial* functions;

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[42] *Alfredo Tagle v. Equitable PCI Bank*, G.R. No. 172299, April 22, 2008, citing *Landbank of the Philippines v. Court of Appeals*, 456 Phil. 755; *Sanchez v. Court of Appeals*, 345 Phil. 155.

2. Such tribunal, board, or officer has acted *without or in excess of jurisdiction, or with grave abuse of discretion* amounting to lack or excess of jurisdiction; and

3. There is *no appeal or any plain, speedy and adequate remedy* in the ordinary course of law.

First: The issuance of the response letters (assailed Resolutions) denying petitioners' requests for cancellation of LOAs is not a judicial or quasi-judicial act of the respondent.

As part of the Executive Department of the government, the BIR is vested with powers to assess and collect taxes. To some extent, it also exercises quasi-judicial and subordinate legislative functions.

In the *Banco de Oro* case, the Supreme Court held that appeals from the *decisions* of **quasi-judicial agencies** like the **Commissioner of Internal Revenue**, the Commissioner of Customs, the Secretary of Finance, the Central Board of Assessment Appeals, and the Secretary of Trade and Industry on tax-related problems must be brought *exclusively* to the Court of Tax Appeals.

Respondent's quasi-judicial function is clear under Section 4 of the NIRC of 1997, as amended, to wit:

> Sec. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* – The power **to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance**.
>
> The power **to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner**, subject to the exclusive appellate jurisdiction of the **Court of Tax Appeals**. (*Emphasis supplied*)

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Quasi-judicial or administrative adjudicatory power is that which vests upon the administrative agency the authority to adjudicate the rights of persons before it. It involves the power to hear and determine questions of fact and, after such determination, to decide in accordance with the standards laid down by law issues that arise in the enforcement and administration thereof. In the performance of quasi-judicial, and of course judicial acts, there must be a law that gives rise to some specific rights of persons or property from which the adverse claims are rooted, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with power and authority to determine the law and adjudicate the right of the contending parties.[43]

In carrying out their quasi-judicial functions the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature. Since rights of specific persons are affected, it is elementary that in the proper exercise of quasi-judicial power due process must be observed in the conduct of the proceedings.[44]

In the instant case, petitioners assail the response letters (assailed Resolutions), signed and issued by the revenue officers and group supervisors of RDO No. 043-Pasig City, and the Chief of the Legal Division of RR 7B-East NCR, *denying* their requests for LOA cancellation, *viz.*:

Petitioner	**Response Letters (assailed Resolutions) were signed by/noted by**[45]
St. Timothy Construction Corporation	**Signed by:** Revenue Officer (RO) Princess Eve B. Palabrica and Group Supervisor (GS) Edgardo C. Uy **Noted by:** RDO Vicente P. Gamad, Jr.
St. Matthew Gen. Contractor & Development Corp.	**Signed by:** RO Rogelio T. Porlas and GS Medardo L. Tipon **Noted by:** RDO Vicente P. Gamad, Jr.
Alpha & Omega Gen. Contractor & Dev't. Corp.	**Signed by:** RO Rogelio T. Porlas and GS Medardo L. Tipon **Noted by:** RDO Vicente P. Gamad, Jr.
St. Gerrard Construction Gen. Contractor & Dev't Corp.	**Signed by:** RO Rogelio T. Porlas and GS Medardo L. Tipon **Noted by:** RDO Vicente P. Gamad, Jr.

[43] *The Department of Trade and Industry, et al., v. Danilo B. Enriquez*, G.R. No. 225301, June 02, 2020.
[44] *Commissioner of Internal Revenue, v. CA et al.*, Separate Opinion of Justice Bellosillo, G.R. No. 119761, August 29, 1996.
[45] Docket, pp. 98-109.

Pacifico F. Discaya II	**Signed by:** Oscar A. Aguilar – Chief, Legal Division **Approved by**: RRD Romulo Aguila, Jr.

Petitioners assert that the denial of their requests for LOA cancellation is a *decision of the CIR* arising under the NIRC and its related laws.[46]

We disagree with the petitioners.

As indicated above, the assailed response letters or Resolutions did not come from the CIR. They are not *decisions of the CIR* arising under the NIRC and its related laws. Thus, contrary to petitioners' claim, the denial of their requests for LOA cancellation is neither a decision nor a quasi-judicial act of the CIR.

Similarly, the revenue officers, group supervisors, and the Chief of the Legal Division were not performing a quasi-judicial function when they signed and issued the subject letters. They only responded to petitioners' letters received by their respective offices. Further, as public officials and employees, it is their duty, to act promptly on letters and requests sent by the taxpayers.[47] Here, respondent pointed out to petitioners that the LOA is based on existing laws, rules and regulations, and that an annual audit program is not a condition precedent for the issuance of an LOA.

Second: Respondent did not act with grave abuse of discretion amounting to lack or excess of jurisdiction when the subject response letters (assailed Resolutions) were issued.

Petitioners failed to show that the issuance of the subject LOAs is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

[46] Memorandum for Petitioners, paragraph 9, Docket, p. 147.
[47] Section 5, Republic Act No. 6713, February 20, 1989, "Code of Conduct and Ethical Standards for Public Officials and Employees."

A special civil action for *Certiorari,* or simply a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court is intended for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction.[48]

In order to successfully bring to court a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court, petitioners must be able to allege in the said pleading that respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in the issuance of the questioned decision, resolution, or order. What constitutes "grave abuse of discretion" was discussed by the Supreme Court in the case of *Tan v. Sps. Antazo,*[49] to wit:

> ... it is well-settled that a petition for *certiorari* against a court which has jurisdiction over a case **will prosper only if grave abuse of discretion is manifested. The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order.** Mere abuse of discretion is not enough; **it must be grave. The term grave abuse of discretion is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility**. (*Emphases supplied*)

"Grave abuse of discretion" implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; simply put, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.[50]

It bears reiterating that the assailed Resolutions referred to by petitioners in the Petition[51] are the letters issued by the revenue officers and group supervisors of RDO No. 043-Pasig

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[48] *People of the Philippines v. Court of Appeals*, 468 Phil. 1, 10 (2004).
[49] G.R. No. 187208, 23 February 2011.
[50] *Cuison v. Court of Appeals*, 351 Phil. 1089, 1102 (1998); *Lalican v. Hon. Vergara*, 342 Phil. 485, 495 (1997); *Pure Foods Corp. v. National Labor Relations Commission*, G.R. No. 78591, 21 March 1989, 171 SCRA 415, 426; *Palma v. Q & S Inc.*, 123 Phil. 958, 960 (1966).
[51] Petition for Review, paragraphs 5-7, Docket, p. 9.

City, and the Chief of the Legal Division of RR 7B-East NCR, *viz.*:[52]

> 4. On December 26, 2020, petitioners received respondent's response letter denying with finality their requests for cancellation of the Letters of Authority;
>
> 5. Hence, petitioners have sixty (60) days from receipt of the aforesaid letter response, or until February 24, 2021 within which to file this Petition;
>
> 6. This petition is seasonably filed within the 60-day period with this Court in Division, by way of Certiorari under Rule 65 of the Rules of Court seeking that judgment be rendered cancelling the Letter of Authority (LoA) issued by respondent for being violative of the pertinent provisions of the National Internal Revenue Code and its related laws.

The revenue officers, group supervisors, and the Chief of the Legal Division merely responded to petitioners' *request*s for LOA cancellation when they issued the impugned response letters or assailed Resolutions.

A careful review of the letters shows that they are not the "judgment, order or resolution" that may be assailed and raised before this Court within 60 days under Section 4 of Rule 65. They are regular communication or correspondence issued by BIR officials and employees in reply to a taxpayer's request.

Further, petitioners did not allege grave abuse of discretion on the part of respondent BIR, the CIR, and even the concerned revenue officers, group supervisors, and the Chief of the Legal Division in the issuance of the assailed response letters or Resolutions. Nonetheless, even if there is such an allegation in the Petition, the Court finds no grave abuse of discretion amounting to lack or excess of jurisdiction in the issuance of the assailed response letters.

Correspondingly, the Court finds no grave abuse of discretion amounting to lack or excess of jurisdiction in the issuance of the subject LOAs.

Petitioners claim that respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the LOAs to them. According to petitioners, the "*law has not been observed*" in the issuance of the subject LOAs. For one,

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[52] *Id.*

the LOA state that it was issued pursuant to Section 6(A) and Section 10(c) of the NIRC of 1997, as amended. These provisions pertain to the original and exclusive power of the CIR to authorize the examination of any taxpayer through the issuance of LOA. It also provides that the CIR can delegate this authority to the Revenue Regional Director under such "*rules, regulations, policies and standards*" formulated by the CIR, "*with the approval of the Secretary of Finance.*"

Petitioners claim that they are not disputing the power of the CIR to authorize the examination of any taxpayer, and that of the Revenue Regional Director to issue LOA for the examination of any taxpayer within the region. However, they submit that these powers are not absolute and infinite as it is a requirement in all democratic regimes that they be exercised reasonably and in accordance with the prescribed procedures.

Allegedly, based on their research conducted from the BIR website, they obtained the following information on LOA, to wit:

> "7. How is a particular taxpayer selected for audit?
>
> Officers of the Bureau (Revenue District Officers, ...) responsible for the conduct of audit/investigation shall **prepare a list of all taxpayer who fall within the selection criteria prescribed in a Revenue Memorandum Order issued by the CIR to establish guidelines for the audit program of a particular year. The list of taxpayers ... . The list submitted by RDO shall be pre-approved by the Regional Director and finally approved by Assistant Commissioner, Assessment Service**."

Further, Revenue Memorandum Order (RMO) No. 44-2010 provides that "*The basis for the audit (i.e., regular audit program, special audit, etc.) shall be reflected in the Letter of Authority.*" Moreover, Revenue Administrative Order (RAO) No. 3-2014 provides that the Revenue District Officer has the ministerial duty to "*prepare a list of taxpayers recommended for audit based on audit program prescribed by the National Office (NO).*"

Petitioners claim that despite several demands, respondent failed to state the basis for the audit in the LOAs given to them. Petitioners theorize that respondent's failure and/or refusal to state the audit program on the face of the subject LOAs is due to the non-existence of such audit program

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prescribed by the National Office, which is supposed to be the basis for the LOA. And since there is no audit program: (1) there can be no criteria from where a list of taxpayers can be generated for audit; and (2) there is no such list that the Revenue District Officer can submit for approval by the Regional Director before being submitted to the Assistant Commissioner for another approval and to the CIR for final approval.

Thus, considering the foregoing, petitioners submit that respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the LOAs to petitioners, being contrary to the provisions of the Tax Code and other related laws.

We are not convinced.

Petitioners failed to establish and prove that respondent or any of its duly authorized representatives acted in a capricious, whimsical, arbitrary, or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction in the issuance of the LOAs. Nowhere in the Petition did petitioners show that respondent's failure or refusal to state the audit program in the LOA was patent and gross which would warrant striking down the LOAs.

In the case of *Medicard Philippines, Inc. v. Commissioner of Internal Revenue* (*Medicard* case),[53] the Supreme Court defined what an LOA is, to wit:

> **An 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**. An 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... (*Boldfacing supplied*)

The audit process in the BIR normally commences with the issuance by the CIR or his duly authorized representative of an LOA. The LOA **gives notice** to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time, it **authorizes or empowers** a designated RO to examine,

[53] G.R. No. 222743, April 5, 2017.

verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[54]

The power to issue an LOA by the CIR or his/her duly authorized representative is derived from Section 6(A) of the NIRC of 1997, as amended, which provides as follows:

> 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, <u>the Commissioner or his duly authorized representative may authorize the examination of **any** taxpayer and the assessment of the correct amount of tax, notwithstanding any law requiring the prior authorization of any government agency or instrumentality</u>: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer. (*Emphases supplied*)

Relative thereto, Section 13 of the NIRC of 1997, as amended, provides that the authority of a revenue officer to examine or to recommend the assessment of any deficiency tax due must be exercised pursuant to an LOA, to wit:

> 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 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. (*Boldfacing supplied*)

The importance of an LOA and the corresponding authority it confers upon the revenue officer, is further highlighted by Revenue Memorandum Order (RMO) No. 43-90, which prescribes the revised policy guidelines for the audit/investigation and issuance of letters of authority to audit.

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[54] *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

In *Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp. (McDonald's case)*,[55] the Supreme Court stressed that the LOA is the concrete manifestation of the grant of authority bestowed by the CIR or his duly authorized representatives to the revenue officers, pursuant to Sections 6, 10(c) and 13 of the NIRC of 1997, as amended.

The Supreme Court emphasized in *McDonald's* that the issuance of an LOA prior to examination and assessment is a requirement of due process. It is not a mere formality or technicality. The result of the absence of an LOA is the nullity of the examination and assessment based on the violation of the taxpayer's right to due process.[56]

In trying to invalidate the issuance of the LOAs, petitioners claim that respondent failed to state the basis for the audit, as well as, the audit program on the face of the LOAs, citing as bases RMO No. 44-2010[57] and RAO No. 3-2014.[58]

However, as correctly pointed out by respondent, an annual audit program is not a condition precedent for the issuance of an LOA. An LOA can still be issued despite the absence of an annual audit program as clarified under RMC No. 006-13,[59] the pertinent portion of which reads:

> **This Circular is issued to clarify certain concerns of taxpayers regarding the audit program** and their responsibility in selecting tax agents/practitioners to make representation in the Bureau of Internal Revenue (BIR) in their behalf.
>
> *Background*
>
> Item H (7) of Revenue Administrative Order (RAO) No. 10-2000 states that:
>
>> "The Revenue District Officer shall supervise/undertake audit of tax cases within the RDO's jurisdiction, **<u>in accordance with the audit program developed and prescribed by the National Office</u>**."

[55] G.R. No. 242670, May 10, 2021.
[56] *Id.*
[57] Electronic Issuance of Letters of Authority.
[58] Organization and Functions of the Regional Offices, Its Divisions & Sections and Revenue District Offices.
[59] Clarifying Taxpayers' Concerns on the Audit Program and Their Responsibility in Engaging Tax Agents/Practitioners.

> This function in the RAO is one of the reasons cited by some taxpayers and practitioners in questioning the validity of an issued electronic Letter of Authority (eLA) in case of non-issuance of a Revenue Memorandum Order (RMO) providing for an annual audit program.
>
> xxx xxx xxx
>
> *Clarification*
>
> A. On the Audit Program
>
> **In the absence of an annual audit program, the Commissioner has the authority to make assessments pursuant to Section 6 (A) of the Tax Code**, as amended, to wit:
>
>> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* —
>>
>> xxx xxx xxx

Indeed, had petitioners broadened their research, they would have come across with RMO No. 019-15,[60] which prescribes the policies, guidelines, and procedures to be observed in the audit/investigation of tax returns. The audit program being "mandated" by petitioners, could not be stated in the LOA for the reason of practicality as it contains the prescribed policies, guidelines, and procedures to be observed in the audit/investigation of tax returns.

Besides, the purpose of an LOA is to give notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time, it represents the authority given to the named/designated Revenue Officer (RO) to perform assessment functions.

Here, the subject LOAs were issued by an RRD, a duly authorized representative to issue LOA pursuant to Section 10(c)[61] of the NIRC of 1997, as amended. **Grave abuse of discretion** amounting to lack or excess of jurisdiction cannot be imputed against a public official who is **<u>only</u>** performing his/her mandate to first notify the taxpayer that he/she is

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[60] BIR Audit Program.

[61] 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:

xxx xxx xxx

(c) Issue Letters of Authority for the examination of taxpayers within the region; xxx under investigation for possible deficiency tax assessment and, at the same time, giving authority to a Revenue Officer to do the assessment functions, under an LOA.

Section 6 of the NIRC of 1997, as amended, is crystal clear. The CIR or his/her duly authorized representative, may authorize the examination of **ANY** taxpayer and the assessment of the correct tax.

Prescinding from the foregoing discussions, the Court concludes that no grave abuse of discretion can be attributed to respondent when it issued the subject LOAs despite the absence of an annual audit program.

Petitioners have other plain, speedy, and adequate remedies in the ordinary course of law.

This Petition for *Certiorari* is a wrong remedy.

Settled is the rule that the special civil action of certiorari under Rule 65 of the Revised Rules of Court is available to an aggrieved party only when "there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law." Otherwise, the petition will not prosper even if the alleged ground is grave abuse of discretion.[62]

The thrust of the rule on exhaustion of administrative remedies is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. To this end, administrative agencies are afforded a chance to correct any previous error committed in their forum. Furthermore, reasons of law, comity, and convenience prevent the courts from entertaining cases proper for determination by administrative agencies.[63]

Here, petitioners failed to exhaust all other remedies available to them. A motion or request for reconsideration is a plain, speedy, and adequate remedy in the ordinary course of

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[62] *Bethel Realty and Development Corp. v.. Housing and Land Use Regulatory Board, et al.*, G.R. No. 184482, July 4, 2012.
[63] *Gonzales v. Court of Appeals*, 409 Phil. 684 (2001).

law. An appeal to the Revenue Regional Director[64] or the Commissioner of Internal Revenue is also an available remedy.

It is worth emphasizing that the response letters (assailed Resolutions) were signed and sent to petitioners St. Timothy Construction Corporation, St. Matthew Gen. Contractor & Development Corp., Alpha & Omega Gen. Contractor & Dev't. Corp., and St. Gerrard Construction Gen. Contractor & Dev't Corp., by the revenue officers and group supervisors and noted by the RDO. On the other hand, the letter received by petitioner Pacifico F. Discaya II was signed by Oscar A. Aguilar – Chief, Legal Division, and approved by RRD Romulo Aguila, Jr.

Upon receipt of the assailed response letters, petitioners immediately proceeded to this Court without filing first a *motion or request for reconsideration* with the revenue officials who issued the assailed response letters or to the RDO, who has the duty to examine the efficiency of all officers and employees under his supervision, including revenue officers and group supervisors.[65] Petitioners could also file an appeal to the RRD who exercises control and supervision over the regional officers and employees, including the RDOs;[66] or to the Commissioner of Internal Revenue himself.

Petitioners cannot prematurely resort to a petition for *certiorari* before the Court on the wrong assumption that a plain reading of the assailed Resolutions hinted that they were already *final.* To reiterate, petitioners ought to know that apart from the RDO, recourse to the RRD and the Commissioner of Internal Revenue, who have the authority to review the actions of their subordinates, is similarly available in this case.

[64] 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:
(a) Implement laws, policies, plans, programs, rules and regulations of the department or agencies in the regional area;
(b) Administer and enforce internal revenue laws, and rules and regulations, including the assessment and collection of all internal revenue taxes, charges and fees;
(c) Issue Letters of Authority for the examination of taxpayers within the region;
(d) Provide economical, efficient and effective service to the people in the area;
(e) Coordinate with regional offices or other departments, bureaus and agencies in the area;
(f) Coordinate with local government units in the area;
(g) Exercise control and supervision over the officers and employees within the region; and
(h) Perform such other functions as may be provided by law and as may be delegated by the Commissioner.

[65] Section 11, National Internal Revenue Code (NIRC) of 1997, as amended.
[66] Section 10 (g), *id.*

In the case of *Lopez v. City of Manila*,[67] the Supreme Court ruled that where a remedy is available within the administrative machinery, this should be resorted to before resort can be made to courts, not only to allow the administrative agency to decide the matter by itself correctly but also to prevent unnecessary and premature resort to courts.

Further, in the case of *Paat v. Court of Appeals*,[68] the Supreme Court ruled that before a party is allowed to seek the court's intervention, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter within his jurisdiction, then such remedy should be exhausted before the court's judicial power can be sought. Failure to exhaust administrative remedies provided by law, by weight of established jurisprudence, is fatal to one's cause of action.

Lest we forget, the law intends to allow the administrative agency to rectify the errors it may have lapsed into before resorting to the courts of justice can be had.

The procedural shortcut taken by petitioners finds no justification either in law or jurisprudence. It is fatal to their Petition.

Accordingly, since Petitioners have other plain, speedy, and adequate remedies, the instant Petition for *Certiorari* is an incorrect remedy.

Respondent did not commit an <u>error of law</u> when the revenue officers, group supervisors, and the Chief, Legal Division of RR 7-B issued the letters in response to petitioners' request for LOA cancellation.

As previously held, the Court finds no *grave abuse of discretion* amounting to lack or excess of jurisdiction in the issuance of the assailed response letters (Resolutions).

[67] G.R. No. 127139, February 19, 1999.
[68] G.R. No. 111107, January 10, 1997.

Similarly, the Court finds no *error of law* when the revenue officers, group supervisors, and the Chief, Legal Division of RR 7-B issued the same letters.

Further, a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court does not encompass an error of law.[69] The sole object of the writ of *certiorari* is to correct errors of jurisdiction or grave abuse of discretion.

Thus, petitioners cannot properly raise an *error of law* as an issue in this Petition.

At this juncture, it is also well to add that the Court noted the following *procedural or formal* infirmities in the filing of the Petition for *Certiorari*.

The response letters (assailed Resolutions) attached to the Petition are all photocopies.

The assailed Resolutions attached to the Petition for *Certiorari* are neither duplicate originals nor certified true copies, in violation of Section 1, Rule 65,[70] in relation to Section 3, Rule 46.[71] Although the assailed Resolutions were marked "certified true copy from the original," the persons who certified the documents as copies of the original were the petitioners' representatives, and not the issuing party, the BIR.

The Petition for Certiorari lacks the proper Verification and Certification of Non-Forum Shopping.

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[69] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC, et al.*, G.R. No. 155306, August 28, 2013.

[70] SEC. 1. Petition for Certiorari. - ...

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.

[71] Section 3, Rule 46 provides:

SEC. 3. Contents and filing of petition; effect of noncompliance with requirements. –

...

... [The petition] shall be ... accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. ...

...

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (*Emphasis supplied*)

The Secretary's Certificates attached to the Petition are photocopies.

A perusal of the record reveals that, except for petitioner Pacifico F. Discaya II, the *Verification and Certification of Non-Forum Shopping* of other petitioners are mere photocopies, in violation of Section 1, Rule 65, in relation to Section 3, Rule 46, of the Revised Rules of Court, which requires that the petition shall be accompanied by a **certified true copy** of the sworn certification of non-forum shopping.

Furthermore, the following Secretary's Certificates showing that the petitioner's representative is duly authorized to sign the *Verification and Certification of Non-Forum Shopping,* are mere photocopies:

Petitioner	Representative
St. Timothy Construction Corporation	Ma. Roma Angeline Rimando
St. Matthew Gen. Contractor & Development Corp.	Darryl Mark Pesigan
St. Gerrard Construction Gen. Contractor & Development	Pacifico Discaya II

In *Shipside, Incorporated vs. Court of Appeals, et al.,*[72] the Supreme Court stated certain rules regarding verification and certification against forum shopping, to wit:

> The Court has consistently held that the requirement regarding verification of a pleading is formal, not jurisdictional (*Uy v. LandBank,* G.R. No. 136100, July 24, 2000). Such requirement is simply a condition affecting the form of the pleading, non-compliance with which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.
>
> On the other hand, **the lack of certification against forum shopping is generally not curable by the submission thereof after the filing of the petition**.

[72] G.R. No. 143377, February 20, 2001.

> **Section 5, Rule 45 of the 1997 Rules of Civil Procedure provides that the failure of the petitioner to submit the required documents that should accompany the petition, including the certification against forum shopping, shall be sufficient ground for the dismissal thereof. The same rules applies to certifications against forum shopping signed by a person on behalf of a corporation which are unaccompanied by proof that said signatory is authorized to file a petition on behalf of the corporation**. (*Boldfacing and underscoring supplied*)

Based on the foregoing jurisprudential pronouncements, non-compliance with the requirement of verification does not necessarily render the pleading fatally defective. However, as regards the submission of the certification against forum shopping, it is clear that in case such certification is not accompanied by proof that the signatory thereof is authorized to file the petition on behalf of the corporation, the same is considered as a ground for the dismissal of the same.

In the instant case, while it appears that Ms. Ma. Roma Angeline Rimando, Darryl Mark Pesigan, and Pacifico Discaya II, are authorized to file the Petition on behalf of St. Timothy Construction Corporation, St. Matthew Gen. Contractor & Development Corp., and St. Gerrard Construction Gen. Contractor & Development, respectively, their respective proof of authority (*i.e.*, Secretary's Certificate) to institute the instant Petition is just a mere photocopy. To the mind of the Court, this cast doubt as to the authenticity their authority to file the instant Petition on behalf of the aforesaid petitioners. And as mentioned earlier, when the *Certification of Non-Forum Shopping* is not accompanied by proof that the signatory thereof is authorized to file the petition on behalf of the corporation, the same is sufficient ground for the dismissal of the action.

Petitioners failed to join as respondent the officer or person who rendered the assailed Resolutions.

Pursuant to Section 5, Rule 65 of the Revised Rules of Court, which reads:

> Section 5. *Respondents and costs in certain cases.* – **When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such**

> **public respondent or respondents, the person or persons interested in sustaining the proceedings in the court**; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.
>
> Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein.

Clear from the foregoing that when the petition filed relates to the acts or omissions of a quasi-judicial agency, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court.

Here, petitioners failed to implead the officials and employees of the BIR whose alleged acts or omissions have caused petitioners to file this Petition.

In sum, there is an abundance of reasons, both procedural and substantive, which are fatal to petitioners' case. The Supreme Court, in several cases, has exercised leniency in applying the rules to dismiss the petition based on mere technicalities. However, the multiple violations of the rules in this case only show petitioners' conscious disregard for the procedure.

Nonetheless, even if the Court ignores petitioners' non-compliance with the above formal requirements, the Petition still fails for failure to satisfy the essential requisites under Section 1 of Rule 65.

WHEREFORE, premises considered, the instant Petition for *Certiorari* is **DISMISSED.**

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest 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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, 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