REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PHILIPPINE HYDRO (PH) INC., *Petitioner,*

CTA Case No. 10618

-*versus*-

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

Promulgated:
MAR 06 2023 1:29pm

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DECISION

MANAHAN, *J.:*

The present *Petition for Certiorari*[1] dated September 27, 2021 was filed on October 21, 2021 by petitioner Philippine Hydro (PH) Inc. (PHI) against respondent Commissioner of Internal Revenue (CIR), praying that the following judgment be rendered:

a) annulling and setting aside the *Subpoena Duces Tecum* (SDT), with SDT No. M-2021-0035 issued by the CIR on July 28, 2021, on the ground of grave abuse of discretion amounting to excess or lack of jurisdiction;

b) declaring the obligation of petitioner to retain and preserve books of account and other accounting records has already elapsed;

c) declaring the right of respondent to assess petitioner has already prescribed; and

[1] Docket, CTA Case No. 10618, pp. 6-27.

d) declaring *Letter of Authority* (LOA) with LOA No. 211-2021-00000009 issued by respondent is void.

THE PARTIES

Petitioner PHI is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) under Company Registration No. A199902718, and with principal office at G/F MWSS Engineering Bldg., MWSS Compound, Katipunan Avenue, Balara Filter, Pansol 3, Quezon City.[2] It is also registered with the Bureau of Internal Revenue (BIR), as shown in its Certificate of Registration OCN No. 3RC0000792542 dated January 31, 2000, with Tax Identification Number 204-906-011-000.[3]

Respondent CIR is the head of the BIR, the government agency vested with the authority to administer and enforce national internal revenue taxes, including, among others, the assessment and collection of all internal revenue taxes, fees, and charges. He may be served with summons, notices, and other court processes at his office at the BIR National Office Building, Diliman, Quezon City.[4]

THE FACTS

In the present *Petition for Certiorari*, petitioner alleges the following factual antecedents:

> "12. On October 2, 2015, Petitioner received Letter of Authority No. LOA-211-2015-00000220 (SN: eLA201100095641) dated September 15, 2015, authorizing Revenue Officers Mary Grace Alonzo, Gary Anastacio, Gertrudes Elto, and Group Supervisor Evangeline Catotal of National Investigation Division, to examine Petitioner's books of accounts and other accounting records for all internal revenue taxes covering the taxable period from January 1, 2006 to December 31, 2012.
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> 13. On the same date, Petitioner received a letter from the BIR dated May 6, 2015, requesting copies of various records, documents and schedules.
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[2] Docket, Pars. 6 and 9, *Petition for Certiorari*, pp. 7 and 8, respectively.
[3] *Id.*, Par. 11, *Petition for Certiorari*, p. 9.
[4] *Id.*, Par. 8, *Petition for Certiorari*, p. 8.

14. On January 7, 2016, Petitioner through its counsel complied with the order of the BIR to submit the registered records and documents pursuant to LOA 211-2015-0000020 (sic) dated September 15, 2015.

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15. On February 26, 2021, Respondent issued a new Letter of Authority No. LOA-211-2021-00000009 (SN: eLA201900006387), authorizing Revenue Officer Mary Grace Alonzo, Josephine Duran, Veneracion Prado and Group Supervisor Alexander Manguba to examine Petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2008 to December 31, 2012.

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16. On April 21, 2021, Respondent issued a Second and Final Request for Presentation of Records. The second and final request for presentation of records specifically requested the presentation of the books of account and other accounting records of the Petitioner. Further, it also recommends that a subpoena duces tecum be issued against Petitioner.

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17. On May 17, 2021, Petitioner, xxx, replied to the final request for presentation of records dated April 21, 2021. It explained in the reply letter that Petitioner has already complied with the submission of documents as evidenced by the transmittal letter dated January 1, 2016, duly received by the BIR on January 7, 2016. Petitioner also explained in the same letter that tax investigations for most of the covered taxable years in the LOA dated February 26, 2021 were already terminated. Lastly, Petitioner, explained that the period to preserve the books of account and other accounting records for the covered taxable years has already lapsed.

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18. On July 29, 2021, a Subpoena Duces Tecum addressed to Petitioner's President, Mr. John Patrick C. Gregorio was received by Petitioner, through the undersigned, ordering Petitioner to appear before the BIR National and submit various documents indicated therein on August 11, 2021."[5]

As already stated, petitioner filed the present *Petition for Certiorari* on October 21, 2021.[6]

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[5] Docket, pp. 9 to 10.
[6] *Supra*, Note 1. *om*

On November 18, 2021, petitioner filed a *Submission with Manifestation.*[7]

In the Resolution dated November 19, 2021,[8] this Court, directed respondent to file a comment within ten (10) days from receipt thereof. However, respondent failed to file the same.[9]

Thereafter, in the Resolution dated March 16, 2022,[10] the Court submitted the case for decision.

ISSUES

In its *Petition for Certiorari*, petitioner raised the following issues, to wit:

> "A. Whether or not the Court of Tax Appeals has jurisdiction over the instant Petition for Certiorari;
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> B. Whether or not Respondent committed grave abuse of discretion amounting to excess or lack of jurisdiction in issuing Subpoena Duces Tecum and the LOA No. 211-2021-00000009 under the following grounds:
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> i. The obligation of Petitioner to retain and preserve its books of account and other accounting records has already lapsed;
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> ii. The right of Respondent to assess Petitioner has already prescribed;
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> iii. LOA 211-2021-00000009 issued by Respondent is void as it covers the same taxable period previously investigated by Respondent which was already closed and terminated; and

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[7] *Id.*, pp. 448 to 452.
[8] *Id.*, p. 502.
[9] *Id.*, Records Verification dated March 2, 2022 issued by the Judicial Records Division of this Court, p. 506.
[10] *Id.*, p. 508.

iv. LOA No. 211-2021-00000009 issued by Respondent is void as it covers more than one taxable year."[11]

Petitioner's Arguments

Petitioner argues that this Court has jurisdiction over the instant *Petition for Certiorari*; that respondent committed grave abuse of discretion amounting to lack of jurisdiction, in issuing the subject SDT and the LOA No. 211-2021-00000009; that petitioner's obligation to retain and preserve its books of account and other accounting records has already lapsed; that the right of respondent to assess petitioner has already prescribed; that LOA No. 211-2021-00000009 issued by respondent is void, as it covers the same taxable period previously investigated by respondent which has already been closed and terminated; and that LOA No. 211-2021-00000009 issued by respondent is void, as it covers more than one taxable year.

RULING OF THE COURT

This Court has jurisdiction over petitions for certiorari.

The issue of whether this Court has jurisdiction over petitions for *certiorari* has already been settled by the Supreme Court. In *The Philippine American Life and General Insurance Company vs. The Secretary of Finance, et al.*,[12] the High Court said:

> "In the recent case of *City of Manila v. Grecia-Cuerdo*,[13] the Court en banc has ruled that **the CTA now has the power of certiorari in cases within its appellate jurisdiction.** To elucidate:
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> > The prevailing doctrine is that the authority to issue writs of certiorari involves the exercise of original jurisdiction which must be expressly conferred by the Constitution or by law and cannot be implied from the mere existence of appellate jurisdiction. Thus, x x x this Court has ruled against the jurisdiction of courts or tribunals over petitions for certiorari

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[11] Docket, pp. 11-12.
[12] G.R. No. 210987, November 24, 2014.
[13] G.R. No. 175723, February 4, 2014.

on the ground that there is no law which expressly gives these tribunals such power. It must be observed, however, that x x x these rulings pertain not to regular courts but to tribunals exercising quasi-judicial powers. With respect to the Sandiganbayan, Republic Act No. 8429 now provides that the special criminal court has exclusive original jurisdiction over petitions for the issuance of the writs of mandamus, prohibition, certiorari, habeas corpus, injunctions, and other ancillary writs and processes in aid of its appellate jurisdiction.

In the same manner, Section 5 (1), Article VIII of the 1987 Constitution grants power to the Supreme Court, in the exercise of its original jurisdiction, to issue writs of certiorari, prohibition and mandamus. With respect to the Court of Appeals, Section 9 (1) of Batas Pambansa Blg. 129 (BP 129) gives appellate court, also in the exercise of its original jurisdiction, the power to issue, among others, a writ of certiorari, whether or not in aid of its appellate jurisdiction. As to Regional Trial Courts, the power to issue a writ of certiorari, in the exercise of their original jurisdiction, is provided under Section 21 of BP 129.

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 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.**
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> **Indeed, in order for any appellate court to effectively exercise its appellate jurisdiction, it must have the authority to issue, among others, a writ of certiorari. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered a partial, not total.**" (*Emphasis and underscoring added*)

Subsequently, in *Banco De Oro, et al. vs. Republic of the Philippines, et al.*,[14] the Supreme Court likewise held:

> "Section 7 of Republic Act No. 1125, as amended, is explicit that, except for local taxes, appeals from the decisions of **quasi-judicial agencies** (**Commissioner of Internal Revenue**, Commissioner of Customs, Secretary of Finance, Central Board of Assessment Appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the Court of Tax Appeals.
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> In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. **Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.**" *(Emphases added)*

Section 1, Article VIII of the 1987 Philippine Constitution provides:

> "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*)

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

In the same vein, Sections 1 and 4, Rule 65 of the Rules of Court, as amended, provide:

> "Section 1. *Petition for certiorari.* — **When any** tribunal, board or **officer exercising** *judicial or* **quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require
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> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.
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> Section 4. *When and where petition filed.* — **The petition shall be filed not later than sixty (60) days from** notice of the judgment, **order** or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.
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> The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.
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> No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days." (*Emphases supplied*)

In view of the foregoing, this Court can undoubtedly act on and resolve the present *Petition for Certiorari.*

The records of the case, as well as petitioner's admission in the instant petition, reveal that it received the subject SDT on July 29, 2021. Petitioner then had sixty (60) days from July

29, 2021 or until September 27, 2021 to file the instant petition in this Court. Thus, the filing of the instant petition on October 21, 2021 was beyond the prescribed period.

Nonetheless, the Court deems it prudent to discuss the nature of the writ of certiorari as it may apply to the case at hand considering that respondent's alleged grave abuse of discretion impinging on the right of the petitioner as a taxpayer is of paramount interest. The proverbial toss between the state's power to tax and the individual's right to due process must be reviewed anew.

A writ of certiorari is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of certiorari must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules.[15]

The requisites for the issuance of a writ of *certiorari* are as follows:[16]

1. Tribunal, board or officer exercising judicial or quasi-judicial functions, or regulatory functions, in case of an administrative agency;

2. Tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion; and

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

Respondent exercises quasi-judicial power.

The petition is premised on the allegation that respondent exercised grave abuse of discretion when he ordered the issuance of the LOA, the SDT and other related

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[15] *Rafael N. Nunal v. Commission on Audit, et al.,* G.R. No. 78648 January 24, 1989; *Republic of the Philippines v. Pantranco North Express, Inc., et al.,* G.R. No. 178593, February 15, 2012, *Bank of Commerce v. Radio Philippines Network, Inc., et al.,* G.R. No. 195615, April 21, 2014; *Civil Procedure Explained with 2019 Amendments and Up-to-date Jurisprudence,* Vol. 2, Dean Maria Concepcion S. Noche, p. 532.
[16] *Civil Procedure Explained with 2019 Amendments and Up-to-date Jurisprudence,* Vol. 2, Dean Maria Concepcion S. Noche, p. 533.

orders despite the onset of prescription and other patent violations of legal provisions. In *Kilusang Mayo Uno, et al. v. Hon. Benigno Simeon C. Aquino III, et al.*;[17]

> "With respect to the Court, however, **the remedies of certiorari** and prohibition are necessarily **broader in scope and reach**, and **the writ of certiorari** or prohibition **may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government**, *even if the latter does not exercise judicial, quasi-judicial or ministerial functions.*" (*Emphasis supplied*)

Mere abuse of discretion is not enough; it must be grave. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.[18]

In the instant case, petitioner assails the action of respondent in issuing an SDT on the former's accounting records for the period covering taxable years 2008-2012 despite the fact that it already submitted the required records and documents on an earlier tax examination which also covered the same period.[19]

The issuance of *subpoena duces tecum* is within respondent's Power to Obtain Information, and to Summon, Examine, and Take Testimony of Persons under Section 5 of the 1997 National Internal Revenue Code (NIRC), as amended. Thus, the issuance of said subpoena falls within the jurisdiction of this Court under Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, to wit:

> "Sec. 7. Jurisdiction. - The CTA shall exercise:
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> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

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[17] G.R. No. 210500, April 02, 2019.
[18] *Civil Procedure Explained with 2019 Amendments and Up-to-date Jurisprudence*, Vol. 2, Dean Maria Concepcion S. Noche, p. 541.
[19] Docket, Exhibit "P-7", Petitioner's Letter dated January 6, 2016 to the Bureau of Internal Revenue, p. 72.

> 1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue**; ..." (*Emphasis supplied*)

However, in this particular instance, the rationale behind the issuance of the SDT is legally wanting because the power to assess by the respondent for the taxable periods covered by the SDT has long prescribed.

Taxable Year	Last Day of Filing for Income Tax	Last Day of Prescriptive Period for Income Tax
2008	April 15, 2009	April 15, 2012
2009	April 15, 2010	April 15, 2013
2010	April 15, 2011	April 15, 2014
2011	April 15, 2012	April 15, 2015
2012	April 15, 2013	April 15, 2016

Respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction

While the factual antecedent presented by petitioner in its *Petition for Certiorari* was not opposed, respondent's action is manifest, viz:

Firstly, the period covered under LOA No. LOA-211-2015-00000220 (SN: eLA201100095641) dated September 15, 2015[20] refers to taxable period from January 1, 2006 to December 31, 2012 while LOA No. LOA-211-2021-00000009 (SN: eLA201900006387) dated February 26, 2021[21] covers the period from January 1, 2008 to December 31, 2012. Hence, the coverage of the two LOAs were substantially the same.

The required records and documents under the subject SDT No. M-2021-0035 dated July 28, 2021[22] were already submitted through the Letter dated January 6, 2016[23] of

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[20] Docket, Exhibit "P-5", p. 68.
[21] *Id.*, Exhibit "P-8", p. 408.
[22] *Id.*, Exhibit "P-1", pp. 36-38.
[23] *Id.*, Exhibit "P-7", pp. 72-407. om

petitioner in compliance with LOA No. LOA-211-2015-00000220.

Further, the two (2) LOAs covered more than one taxable year which is invalid as it violates respondent's own rules and regulations as stated in the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*,[24] to wit.:

> "Upon review, the CTA-EB even added that the coverage of LOA 19734, particularly the phrase "and unverified prior years," violated Section C of Revenue Memorandum Order No. 43-90 dated September 20, 1990, the pertinent portion of which reads:
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> > 3. A Letter of Authority should cover **a taxable period not exceeding one taxable year**. The practice of issuing L/As covering audit of "unverified prior years is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the L/A. [Emphasis supplied]
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> On this point alone, the deficiency VAT assessment should have been disallowed...."

Secondly, the right of the respondent to assess petitioner's internal revenue taxes for taxable years 2008 to 2012 had already prescribed when LOA No. LOA-211-2021-00000009 was issued on February 26, 2021.

Section 203 of the 1997 National Internal Revenue Code (NIRC), as amended, provides:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." (*Emphasis supplied*)

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[24] G.R. No. 178697, November 17, 2010. cm

The above-cited provision categorically states that any assessment of internal revenue taxes against any taxpayer shall only be done within the three (3)-year period after the last day prescribed by law for the filing of their respective returns unless if the payment of said internal revenue taxes was attended with fraud under Section 222 of the 1997 NIRC, as amended.

In the instant case, there was no indication in either the subject SDT dated July 28, 2021 and LOA No. LOA-211-2021-00000009 dated February 26, 2021 that the tax examination that would be conducted by respondent was the result of any findings of fraud against petitioner. The 3-year period should be applied. The right of the respondent to assess any internal revenue taxes paid during the taxable year 2012 has already prescribed after the taxable year 2015. Thus, the issuance of the subject SDT has no legal basis.

Thirdly, the holding period on petitioner's books of accounts and other accounting records had already lapsed. Section 235 of the 1997 NIRC, as amended, provides:

> SEC. 235. *Preservation of Books and Accounts and Other Accounting Records.* - **All the books of accounts, including the subsidiary books and other accounting records of corporations, partnerships, or persons, shall be preserved by them for a period beginning from the last entry in each book until the last day prescribed by Section 203 within which the Commissioner is authorized to make an assessment**. The said books and records shall be subject to examination and inspection by internal revenue officers: Provided, that for income tax purposes, such examination and inspection shall be made only once in a taxable year, except in the following cases:
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> (a) Fraud, irregularity or mistakes, as determined by the Commissioner;
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> (b) The taxpayer requests reinvestigation;
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> (c) Verification of compliance with withholding tax laws and regulations;
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> (d) Verification of capital gains tax liabilities; and
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> (e) In the exercise of the Commissioner's power under Section 5(B) to obtain information from other persons in which case, another or separate examination and inspection may be made. Examination and inspection of books of accounts and other accounting records shall be done in the taxpayer's office or place of business or in the office

> of the Bureau of Internal Revenue. All corporations, partnerships or persons that retire from business shall, within ten (10) days from the date of retirement or within such period of time as may be allowed by the Commissioner in special cases, submit their books of accounts, including the subsidiary books and other accounting records to the Commissioner or any of his deputies for examination, after which they shall be returned. Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability..." (*Emphasis supplied*)

The abovementioned provision refers to the period when any taxpayer is legally mandated to secure its books of accounts and accounting records, which is three (3) years. Again, the subject SDT dated July 28, 2021 and the LOA No. LOA-211-2021-00000009 dated February 26, 2021 indicates that there was no finding of fraud against petitioner.

Hence, petitioner is only mandated to secure its books of accounts and accounting records for a period of 3 years. Petitioner's books of accounts and accounting records for taxable year 2012 may only be kept until the year 2015.

Taking all the cited lapses and violations of the 1997 NIRC, as amended, and its rules and regulations by the respondent, the issuance of the SDT is attended with grave abuse of discretion amounting to lack or excess of jurisdiction. Hence, fulfilling the second requisite for the issuance of the writ of *certiorari.*

Petitioner has no plain, speedy and adequate remedy after the issuance of the SDT

The next procedure after the issuance of SDT is the conduct of the tax examination itself. However, to require petitioner to undergo the rigors of another audit and investigation, endure the entire assessment process, and then file a protest against the assessment is not the plain, speedy, and adequate remedy contemplated by law.

The case of *Bordomeo vs. Court of Appeals*[25], citing *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta v. Spouses Lorenzo Mores and Virginia Lopez*[26], discussed the propriety of *certiorari* when the available remedy is not speedy and adequate, to wit:

> "It is the adequacy of a remedy in the ordinary course of law that determines whether a special civil action for certiorari can be a proper alternative remedy. We reiterate what the Court has discoursed thereon in *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta v. Spouses Lorenzo Mores and Virginia Lopes, viz*:
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>> 'Specifically, **the Court has held that the availability of appeal as a remedy does not constitute sufficient ground to prevent or preclude a party from making use of certiorari if appeal is not an adequate remedy, or an equally beneficial, or speedy remedy. It is <u>inadequacy</u>, not the mere absence of all other legal remedies and the danger of failure of justice without the writ, that must usually determine the propriety of certiorari. A remedy is plain, speedy, and adequate if it will promptly <u>relieve the petitioner from the injurious effects of the judgement</u>, order, or resolution of the lower court or agency. It is understood, then, that a litigant need not mark time by resorting to the less speedy remedy of an appeal in order to have an order annulled and set aside for being patently void for failure of the trial court to comply with the Rules of Court.'"**
>> (*Emphases supplied*)

The remedy of protesting an assessment is inadequate. It will not promptly relieve the petitioner from the injurious effects of an audit that was conducted pursuant to an LOA that was issued by respondent with grave abuse of discretion. Indeed, on this point, this Court is emphatic in stressing the reasons why the issuance of the LOA may not be upheld.

First. The BIR sought to investigate petitioner's books of accounts and other accounting records for all internal revenue taxes for taxable years **January 1, 2008 to December 31, 2012**, pursuant to LOA-211-2021-00000009 dated February 26, 2021. Notably, LOA-211-2021-00000009 covers taxable

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[25] G.R. No. 161596, February 20, 2013.
[26] G.R. No. 159941, August 17, 2011.

years which **were previously investigated by respondent** pursuant to an earlier LOA, that is, LOA-211-2015-0000020 dated September 15, 2015 which covers taxable **years January 1, 2006 to December 31, 2012**.

Second. LOA-211-2021-00000009 is void as prescription to assess for taxable years January 1, 2008 to December 31, 2012 had already set in when it was issued on February 26, 2021. The BIR has three (3) years to assess a taxpayer pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended.[27]

While the period to assess may be made within the extraordinary period of ten (10) years pursuant to Section 222[28] of the NIRC of 1997, as amended, nevertheless, the records of the case is bereft of indication that the ground for the application of the said extraordinary prescriptive period to assess is present in this case. There is nothing in the records of the case which shows that LOA-211-2021-00000009 was issued for the conduct of a formal fraud investigation. No preliminary investigation had been conducted pursuant to Revenue Audit Memorandum Order (RAMO) No. 1-00[29] prior to the issuance of LOA-211-2021-00000009. Consequently, there is no finding of *prima facie* existence of fraud that justifies the issuance of LOA-211-2021-00000009 and the application of the ten (10)-year prescriptive period to assess.

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[27] **SEC. 203.** *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.
[28] **SEC. 222.** *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*-
In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.xxx
[29] "C. PROCEDURE

A preliminary investigation must first be conducted to establish the *prima facie* existence of fraud. This shall include the verification of the allegations on the confidential information and/or complaints filed, and the determination of the schemes and extent of fraud perpetrated by the denounced taxpayers.

The Formal Fraud Investigation, which includes the examination of the taxpayer[']s books of accounts through the issuance of Letter of Authority, shall be conducted only after the *prima facie* existence of fraud has been established. xxx"

Simply put, the denial of the present Petition for Certiorari will result in a failure of justice as petitioner will be required to the less speedy remedy of going through the tedious and protracted rigors of protesting an assessment in order to have it cancelled on the ground that it is intrinsically invalid for having been issued pursuant to a void LOA and beyond the three (3)-year prescriptive period to assess.

WHEREFORE, premises considered, petitioner's *Petition for Certiorari* is **GRANTED**. Accordingly, the *Subpoena Duces Tecum* (SDT), with SDT No. M-2021-0035, issued on July 28, 2021 and *Letter of Authority* (LOA) with LOA No. 211-2021-00000009 dated February 26, 2021, both issued by respondent, are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice