REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

PEOPLE OF THE PHILIPPINES, *Petitioner,*	**CTA SCA Case No. 0017**
	Members:
- versus -	**REYES-FAJARDO,** Chairperson, and **ANGELES,** *JJ.*
HON. NYERSON DEXTER TITO QUILALA TUALLA, in his capacity as the Presiding Judge of Branch 28, Regional Trial Court (RTC), First Judicial Region of San Fernando City, La Union, **LOURDES Z. KORSHAK and LZK HOLDINGS & DEVELOPMENT CORP.,** *Respondents.*	Promulgated: MAR 13 2026 2:10 pm

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RESOLUTION

REYES-FAJARDO, *J.*:

On May 2, 2025, a Decision[1] was rendered, the *fallo* of which states:

> **ACCORDINGLY,** the Petition for Certiorari dated February 12, 2024 in CTA SCA Case No. 0017 is **DISMISSED.**
>
> **SO ORDERED.**

We found that Branch 28, Regional Trial Court of San Fernando City, La Union (RTC-La Union) did *not* commit grave abuse of discretion, amounting to lack or excess of jurisdiction in the rendition of its Joint Decision dated September 5, 2023 and Order dated

[1] Docket, unpaginated.

November 24, 2023. Specifically, RTC-La Union aptly held that private respondents Lourdes Z. Korshak (Korshak) and LZK Holdings & Development Corp. (LZK) are *not* criminally *and* civilly liable for the charges found under Criminal Case Nos. 13760, 13761, 13762, and 13763 because LZK is *not* obligated under the law to pay the assessed deficiency taxes found by the Bureau of Internal Revenue (BIR). The reason—the anterior tax audit and examination, leading to the issuance of the tax assessments in said cases are void, because the BIR's tax agent was *not* armed with proper authority to do so, from the Commissioner of Internal Revenue (CIR) or its duly authorized representative.

On May 21, 2025 petitioner filed a Motion for Reconsideration (Re: Decision dated May 02, 2025),[2] insisting that the acquittal of private respondents in Criminal Case Nos. 13760, 13761, 13762, and 13763 by RTC La Union does not excuse them from payment of its civil liability for unpaid taxes.

According to petitioner, Korshak never challenged the BIR's Preliminary Assessment Notice (PAN) and Formal Letter of Demand and Final Assessment Notices (FLD/FAN), despite receipt thereof; thus, the BIR's FLD/FAN became final, executory, and demandable. For this reason, LZK liability to pay the assessed taxes per FLD/FAN is sanctioned by law.

On the other hand, private respondents failed to interject their comment/opposition on petitioner's Motion for Reconsideration, despite notice.[3]

The Motion lacks merit.

One. Petitioner wants Us to declare that the BIR's formal assessment against LZK became final, executory, and demandable, for private respondents' alleged failure to file a valid administrative protest thereon. Yet, as held in page 9 of the assailed Decision,[4] re-evaluation of evidence and recalibration of facts is beyond the domain of a special civil action for *certiorari*.

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2 *Id.*, unpaginated.
3 Records Verification Report dated August 7, 2025. *Id.*, unpaginated.
4 *Id..*, unpaginated.

Two. As further ruled in pages 11-12 of the assailed Decision,[5] with RTC La Union's decree that private respondents are *not civilly* liable for payment of the 2006 assessed taxes found under the BIR's FLD/FAN, the proper remedy to assail said finding is to *appeal* the same with the CTA. Instead of instituting said appeal, petitioner opted for a *wrong* remedy by impugning such finding through a special civil action for *certiorari*. To underscore, "[a]n appeal and a special civil action for *certiorari* are two different remedies. They are not interchangeable...."[6]

Three. Petitioner is right in asserting that "... the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case."[7] Indeed, taxes and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute.[8] In this regard, Section 6(A) of the 1997 National Internal Revenue Code, as amended, commands, *inter alia*, that the assessed internal revenue taxes be paid upon notice and demand from Commissioner of Internal Revenue (CIR), or his duly authorized representative. *Commissioner of Internal Revenue v. Transitions Optical Philippines, Inc. (TOPI)*[9] clarified that said notice and demand is the BIR's FLD/FAN duly issued to, and served upon the taxpayer:

> **On the other hand, a FAN contains not only a computation of tax liabilities but also a demand for payment within a prescribed period. As soon as [the FAN] is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded.** It also signals the time when penalties and interests begin to accrue against the taxpayer. Thus, the National Internal Revenue Code imposes a 25% penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. Likewise, an interest of 20% *per annum*, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for payment until the amount is fully paid. Failure to file an administrative protest within 30 days from receipt of the FAN will render the assessment final, executory, and demandable.

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5 *Id.*, unpaginated.
6 *Berces v. Civil Service Commission*, G.R. No. 222557, September 29, 2021.
7 *Gaw, Jr. v. Commissioner of Internal Revenue*, G.R. No. 222837, July 23, 2018. Invoked by petitioner in par. 15 of its Motion.
8 See *Proton Pilipinas Corporation v. Republic*, G.R. No. 165027, October 12, 2006.
9 G.R. No. 227544, November 22, 2017. Citations omitted Boldfacing ours.

Commissioner of Internal Revenue v. Pacific Hub Corporation (PHC)[10] re-echoed the foregoing pronouncement in *TOPI*, in this wise:

> Jurisprudence instructs that the issuance of a warrant of distraint and/or levy must be premised first and foremost on the existence of delinquent taxes which, in turn, requires a final determination of the taxpayer's actual tax liability. **Indeed, this final assessment coupled with a formal demand to pay is what triggers an obligation on the part of the taxpayer concerned to pay the amount assessed and demanded, and also signals the reckoning point when penalties and interests begin to accrue.**

Before the BIR's FLD/FAN could validly create a legal obligation on the part of the taxpayer to pay the assessed taxes embodied therein, it should first be valid. Among the conditions therefor is that the formal assessment must be a result of a valid examination and audit by the BIR. Recent jurisprudence discussed the adverse consequence for failure to adhere with said condition.

For instance, in *People v. Gernale (Gernale)*,[11] therein respondent, in her capacity as treasurer of Gernale Electric Contractor Corporation (GECC), was charged before the CTA in Division, for willful failure to pay GECC's 2003 deficiency IT and VAT, based on the BIR's final assessment in the amount of ₱9,663,855.53, punishable under Section 255, in relation to Section 253(d) of the NIRC, as amended. After plea and trial, the CTA in Division: (1) acquitted therein respondent; and (2) exonerated her from payment of said taxes. Therein petitioner moved, but failed to secure the reversal of the *civil* aspect of said case. On appeal, the CTA *En Banc* held, and the Supreme Court agreed, that therein respondent may *not* be adjudged liable for said taxes under such final assessment because: (1) it was a product of an improper examination and audit by the BIR; and (2) GECC has a separate juridical personality from therein respondent.

Akin to *Gernale*, in *People v. E & D Parts Supply, Inc. and Margaret L. Uy (E & D)*,[12] the CTA in Division acquitted Margaret L. Uy (MLU) for two (2) counts of willful failure to pay taxes, punishable under Section 255, in relation to Sections 253(d) and 256

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10 G.R. No. 252944, November 27, 2024. Boldfacing ours.

11 G.R. No. 256868, October 4, 2023.

12 G.R. No. 259284, January 24, 2024. Cited by petitioner in paragraphs 17 and 18 of its Motion.

of the NIRC, as amended, through the grant of her demurrer to evidence. The Supreme Court then ordained that while MLU's acquittal does *not* automatically release E & D Parts Supply, Inc. (EPSI) from its obligation to pay taxes, EPSI is nevertheless *not* liable to pay the assessed deficiency taxes because the same are a product of an illegal examination or audit, *i.e.*, no valid Letter of Authority (LOA), by the BIR.

Taking Our cue from *Gernale* and *E & D*, while Korshak's acquittal does *not* automatically relieve LZK of its legal obligation to pay the 2006 deficiency taxes under the BIR's FLD/FAN dated November 5, 2010, LZK is *not* obligated under the law to pay these taxes. To be precise, Revenue Officer Marc Denison Andrey (RO Andrey) was *not* named in Regional Director Antonio Montemayor's LOA dated August 16, 2007. Therefore, the 2006 deficiency taxes resulting from RO Andrey's audit and investigation encapsulated in the BIR's FLD/FAN dated November 5, 2010 are illegal and void. Being null, collection thereof is no longer possible. Indeed, "... a person committing a void act contrary to a mandatory provision of law cannot claim or acquire any right from [its] void act. A right cannot spring in favor of a person from [its] own void or illegal act."[13]

ACCORDINGLY, petitioner's Motion for Reconsideration (Re: Decision dated May 02, 2025) is **DENIED**, for lack of merit. The Decision dated May 2, 2025 is **AFFIRMED**.

SO ORDERED.

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

I CONCUR:

HENRY S. ANGELES
Associate Justice

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[13] *Commissioner of Internal Revenue v. Team Sual Corporation,* G.R. No. 194105, February 5, 2014.