REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MARKETING CONVERGENCE, INC.,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9379

Members:

CASTAÑEDA, JR., *Chairperson,*
and
BACORRO-VILLENA, *JJ.*

Promulgated:

MAR 08 2021
3:20 p.m.

x--x

RESOLUTION

CASTAÑEDA, JR., *J.:*

For resolution of this Court are the following:

1. Respondent's Motion for Reconsideration filed on December 3, 2020 with petitioner's Comment/Opposition (To Motion for Reconsideration Dated December 3, 2020) filed on January 18, 2021; and

2. Petitioner's Urgent Motion for Suspension of Collection of Tax (with Motion for Application for Temporary Restraining Order and Motion to Dispense with Payment of Bond) filed on December 9, 2020.

It may be recalled that on November 16, 2020, this Court rendered a Decision in the above-captioned case granting the Petition for Review (the "Assailed Decision"). Accordingly, the tax assessments issued against petitioner for deficiency income tax, VAT, WTC, and EWT, for taxable year 2009, in the total amount of ₱179,668,470.65 are cancelled and set aside.

On December 3, 2020, respondent filed his Motion for Reconsideration.

Meanwhile, on December 9, 2020, petitioner filed its Urgent Motion for Suspension of Collection of Tax (with Motion for Application for Temporary Restraining Order and Motion to Dispense with Payment of Bond).

In a Resolution dated January 5, 2021, this Court required petitioner to file its Comment or Opposition to respondent's Motion for Reconsideration within five (5) days from notice. This Court likewise required respondent to file his Comment or Opposition to petitioner's Urgent Motion for Suspension of Collection of Tax (with Motion for Application for Temporary Restraining Order and Motion to Dispense with Payment of Bond) also within five (5) days from notice.

Petitioner filed its Comment/Opposition (To Motion for Reconsideration Dated December 3, 2020) on January 18, 2021. Respondent, however, failed to file a Comment on petitioner's Urgent Motion for Suspension of Collection of Tax (with Motion for Application for Temporary Restraining Order and Motion to Dispense with Payment of Bond) as per the Records Verification Report dated February 10, 2021 issued by this Court's Judicial Records Division.

Motion for Reconsideration

In his Motion, respondent moves for reconsideration of the Assailed Decision based on the following grounds:

I.

THE HONORABLE COURT ERRED IN RULING THAT FAILURE OF THE NEW REVENUE OFFICER (RO) TO

SECURE A NEW LETTER OF AUTHORITY (LOA), AS PROVIDED IN REVENUE MEMORANDUM ORDER (RMO) NO. 43-90, RESULTS IN LACK OF AUTHORITY OF THE REVENUE OFFICER OR RENDERS THE ASSESSMENT INVALID.

II.

THE HONORABLE COURT ERRED IN RULING THAT A NEW LOA MUST BE ISSUED TO THE NEW RO.

III.

THE HONORABLE COURT ERRED IN RULING THAT THE REVENUE OFFICERS WHO CONDUCTED THE EXAMINATION WERE NOT AUTHORIZED TO DO SO; A LOA IS NOT A REQUIREMENT WHEN THE AUDIT INVESTIGATION IS CONDUCTED BY THE OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE.

IV.

A MEMORANDUM OF ASSIGNMENT MAY BE ISSUED BY THE HEAD OF THE INVESTIGATING OFFICE.

In its Comment/Opposition, petitioner disagrees with respondent's allegations in his Motion for Reconsideration and in response thereto, petitioner submits that this Court correctly ruled that the failure of the new revenue officer (RO) to secure an LOA results in lack of authority of the said RO and renders the assessment void. Petitioner asserts that a new LOA must be issued to the new RO. It also contends that this Court correctly ruled that the RO who conducted the examination were not authorized to do so and an LOA is a requirement when the audit investigation is conducted by the Office of the Commission[er] of Internal Revenue. Finally, petitioner maintains that a Memorandum of Assignment is insufficient to clothe the new RO with authority to examine the books of accounts of the taxpayer.

After judicious review of the arguments and counter-arguments raised by the parties as well as the relevant rules and jurisprudence on the matter, this Court finds no substantial matter much less any compelling reason that would warrant the modification let alone the reversal of the Assailed Decision. This Court stands by its ruling that the deficiency assessments upon which the present case is anchored on are intrinsically void due to the absence of authority on the part of the revenue officers who conducted the examination of petitioner's books of accounts and other accounting records.

Based on the documentary evidence duly presented, the revenue officers named under LOA No. 125-2010-00000066 dated May 14, 2010 were different from those who actually examined petitioner's books of accounts and other accounting records for taxable year 2009. As the revenue officers who actually conducted the audit were not named in the said LOA, they cannot derive their authority therefrom. It was also established that these revenue officers conducted the audit on the basis of the Memorandum of Assignment No. LOA-125-2013-116 issued by Mr. Edwin T. Guzman, OIC-Chief of Regular Large Taxpayers Audit Division (RLTAD) II. As previously explained in the Assailed Decision, such Memorandum of Assignment cannot clothe these revenue officers with the requisite authority to conduct the audit of petitioner's books of accounts and other accounting records. **This is due to the fact that the revenue official who issued such Memorandum of Assignment has no power whatsoever to authorize examination of taxpayers for assessment purposes or to effect any modification or amendment to a previously issued LOA. <u>Only the CIR or his duly authorized representatives have that power as mandated by Sections 6, 7, 10 and 13 of the National Internal Revenue Code of 1997, as amended. An OIC-Chief of LTS-RLTAD II is not one of the CIR's duly authorized representatives.</u>**

Urgent Motion for Suspension of Collection of Tax (with Motion for Application for Temporary Restraining Order and Motion to Dispense Payment of Bond)

In its Urgent Motion, petitioner alleges that despite the promulgation of this Court Decision on November 16, 2020 where this Court declared as void the subject deficiency assessments, the respondent still issued a Warrant of Distraint and/or Levy No. 116-

2020-098 which the petitioner received on December 4, 2020.[1] The Warrant of Distraint and/or Levy was allegedly issued to satisfy the deficiency assessment amounting to ₱179,668,470.65.[2] Petitioner likewise requests, in the event the suspension of collection sought is duly granted, that the posting of the bond be dispensed with. Petitioner invokes the Supreme Court's ruling in *Spouses Pacquiao v. Commissioner of Internal Revenue*[3] as one of the legal bases for its Urgent Motion.[4]

As stated above, this Court had provided the respondent an opportunity to file his Comment or Opposition to petitioner's Urgent Motion. Respondent, however, failed to do so. Accordingly, the present Urgent Motion shall be resolved on the basis of existing records, without the need to conduct a hearing for that purpose.[5]

After careful evaluation of the case records vis-à-vis the applicable rules and jurisprudence, this Court finds petitioner's Urgent Motion meritorious.

Section 11 of Republic Act (RA) No. 1125, as amended, in relevant part, provides:

> "SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* –
>
> x x x x x x x x x
>
> No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture, as the case may be, shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: *Provided, however,* **That when in the opinion of the Court the collection by**

---

[1] Annex A, Urgent Motion for Suspension of Collection of Tax (with Motion for Application for Temporary Restraining Order and Motion to Dispense with Payment of Bond), Docket, Vol. III, pp. 872-873.
[2] *Id.*, ₱179,532,470.65 plus compromise penalties in the total amount of ₱136,000.
[3] G.R. No. 213394, April 16, 2016.
[4] Docket, Vol. III, pp. 866-867.
[5] See Sections 2 and 6, Rule 15 of the Rules of Court (As amended by A.M. No. 19-10-20-SC which shall take effect on May 1, 2020 following its publication in the Official Gazette or in two newspapers of general circulation).

> **the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.**" *(Emphasis supplied)*

As may be gleaned from the abovequoted provision, an appeal to this Court from the CIR's decision will not suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law. When in the view of this Court, however, that the collection may jeopardize the interest of the Government and/or the taxpayer, it may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond.

To fully resolve the present Urgent Motion, a brief review of the Supreme Court's ruling in *Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao v. The Court of Tax Appeals – First Division and The Commissioner of Internal Revenue*[6] as well as in the subsequent case of *Tridharma Marketing Corporation v. Court of Tax Appeals, Second Division and the Commissioner of Internal Revenue*[7] is in order.

In *Pacquiao*, the petitioners therein questioned this Court's ruling ordering them to post a cash bond in the amount of ₱3,298,514,894.35 or a surety bond in the amount of ₱4,947,772,341.53, which was effectively an impossible condition given that their undisputed net worth amounted only to ₱1,185,984,697.00. The Supreme Court relevantly held that:

> "[T]he Court still holds that the CTA has ample authority to issue injunctive writs to restrain the collection of tax **and to even dispense with the deposit of the amount claimed or the filing of the required bond**, whenever the **method** employed by the CIR in the collection of tax jeopardizes the interests of a taxpayer for being **patently in violation of the law**.

x x x x x x x x x

---

[6] G.R. No. 213394, April 6, 2016 ("*Pacquiao*").
[7] G.R. No. 215950, June 20, 2016 ("*Tridharma*").

> ***[W]henever it is determined by the courts that the method employed by the Collector of Internal Revenue in the collection of tax <u>is not sanctioned by law,</u>*** the **<u>bond</u>** requirement under Section 11 of R.A. No. 1125 **<u>should be dispensed with</u>**. The purpose of the rule is not only to prevent jeopardizing the interest of the taxpayer, but more importantly, to prevent the absurd situation wherein the court would declare "that the collection by the summary methods of distraint and levy was violative of law, and then, in the same breath require the petitioner to deposit or file a bond as a prerequisite for the issuance of a writ of injunction." *(Emphasis and underscoring in the Original)*

The Supreme Court further ruled that this Court should properly determine, at least *preliminarily*, whether the CIR, in its assessment of the tax liability and its effort of collecting the same, complied with the law. The Supreme Court also explicitly declared that this Court is in a better position to make such *preliminary* determination and to resolve the issue of whether the taxpayers should be required to post the security bond under Section 11 of RA No. 1125, as amended.

In *Tridharma*, the petitioner likewise assailed this Court's resolution ordering it to post a surety bond in the amount of ₱4,467,391,881.76, equivalent to the amount of deficiency assessment. The petitioner asserted the patent illegality of the assessment as basis for the dispensation of the bond requirement. It further argued that the amount of the required surety bond greatly exceeds its net worth and makes it legally impossible to procure the bond from the bonding companies that are limited in their risk assumptions. As shown in its audited financial statements, its net worth only amounted to ₱916,768,767.00, making the amount fixed for the surety bond nearly five (5) times of such net worth. The Supreme Court held:

> "The Court holds, however, that the CTA in Division gravely abused its discretion under Section 11 because it fixed the amount of the bond at nearly five times the net worth of the petitioner without conducting a preliminary hearing to ascertain whether there were grounds to suspend the collection of the deficiency assessment on the ground that such collection would jeopardize the interests of the taxpayer. Although the amount of P4,467,391,881.76 was itself the amount of the

> assessment, it beho[o]ved the CTA in Division to consider other factors recognized by the law itself towards suspending the collection of the assessment, like whether or not the assessment would jeopardize the interest of the taxpayer, or whether the means adopted by the CIR in determining the liability of the taxpayer was legal and valid. **Simply prescribing such high amount of the bond like the initial 150% of the deficiency assessment of P4,467,391,881.76 (or P6,701,087,822.64), or later on even reducing the amount of the bond to equal the deficiency assessment would practically deny to the petitioner the meaningful opportunity to contest the validity of the assessments, and would likely even impoverish it as to force it out of business.**
>
> x x x x x x x x x
>
> Moreover, Section 11 of R.A. 1125, as amended, indicates that the requirement of the bond as a condition precedent to suspension of the collection applies only in cases where the processes by which the collection sought to be made by means thereof are carried out in consonance with the law, not when the processes are in plain violation of the law that they have to be suspended for jeopardizing the interests of the taxpayer." *(Emphasis supplied and citation omitted)*

In the present case, the petitioner contends that the collection of its alleged tax liabilities despite a favorable decision issued by this Court constitutes a clear violation of its right to due process. Thus, it prays for the suspension of the collection thereof and for the dispensation of the bond requirement. Petitioner further asserts that the violation of its due process rights by reason of the collection of its alleged tax liabilities will be material and substantial considering that the threatened seizure of its personal and real properties via the distraint and/or levy thereof would adversely affect the running of its business.

In support of its assertion, petitioner submitted a copy of its 2019 Audited Financial Statements which show that its total assets amounted to ₱2,890,581,891.00 while the total liabilities amounted to ₱2,716,472,649.00.[8] Considering that the subject deficiency assessments sought to be collected by respondent amounted to ℊℯ

[8] Annex B, Urgent Motion for Suspension of Collection of Tax (with Motion for Application for Temporary Restraining Order and Motion to Dispense with Payment of Bond), Docket, Vol. III, pp. 874-938.

₱179,668,470.65, inclusive of surcharges and interests, the said amount is more than the amount of petitioner's net worth of ₱174,109,242.00.

To be sure, the rulings in *Pacquiao* and *Tridharma* apply to the present case. The issuance of the Warrant of Distraint and/or Levy by the respondent notwithstanding this Court's Decision on November 16, 2020 cancelling the deficiency assessments clearly jeopardizes petitioner's interest. Moreover, to demand the posting of the bond as a condition for the suspension of the collection in the present case would practically deny the petitioner the meaningful opportunity to contest the validity of the assessment as it is tantamount to an impossible condition on petitioner's part.

In view of the foregoing, this Court resolves to grant petitioner's Urgent Motion for Suspension of Collection of Tax (with Motion for Application for Temporary Restraining Order and Motion to Dispense with Payment of Bond).

WHEREFORE, premises considered, respondent's Motion for Reconsideration is **DENIED** for lack of merit.

On the other hand, petitioner's Urgent Motion for Suspension of Collection of Tax (with Motion for Application for Temporary Restraining Order and Motion to Dispense with Payment of Bond) is **GRANTED**. Accordingly, respondent is **RESTRAINED** from enforcing any Warrant of Distraint and Garnishment and/or Levy against petitioner. Furthermore, respondent's demand for payment from petitioner of its alleged deficiency income tax, value added tax (VAT), withholding tax on compensation (WTC), and expanded withholding tax (EWT) for the year 2009 in the total amount of ₱179,668,470.65, inclusive of interest and penalties is **IMMEDIATELY SUSPENDED** until further orders from this Court.

SO ORDERED.

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

I CONCUR:

(With Concurring Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

MARKETING CONVERGENCE, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9379

Members:

CASTAÑEDA, JR., Chairperson, *and*
BACORRO-VILLENA, ***JJ.***

Promulgated: MAR 08 2021
3:20 p.m.

x - x

CONCURRING OPINION

BACORRO-VILLENA, J.:

I concur with the resolution denying respondent Commissioner of Internal Revenue's (**respondent/CIR's**) "Motion for Reconsideration" (**MR**) filed on 03 December 2020 and granting petitioner Marketing Convergence, Inc.'s (**petitioner/MCI's**) "Urgent Motion for Suspension of Collection of Tax (with Motion for Application for Temporary Restraining Order and Motion to Dispense with Payment of Bond)" (**Motion for Suspension/Issuance of TRO/Dispensation of Bond**) filed on 09 December 2020.

It appearing that the issues presently raised by respondent in its MR have been sufficiently considered in the subject Decision dated 16 November 2020 and are merely rehash of the issues which the Court has already delved upon, respondent's MR should be denied for lack of merit.

As regards petitioner's Motion for Suspension/Issuance of TRO/Dispensation of Bond, petitioner averred that, despite the favorable decision promulgated in its favor, respondent issued a Warrant of Distraint and/or Levy (**WDL**) No. 116-2020-098 on 30 November 2020 which petitioner received on 04 December 2020. Hence, this Motion for Suspension/Issuance of TRO/Dispensation of Bond.

Section 11[1] of Republic Act (**RA**) No. 1125, as amended by RA 9282 and RA 9503, embodies the rule that an appeal to the Court of Tax Appeals (**CTA**) from the decision of the CIR will not suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law. However, when, in the CTA's view, the collection may jeopardize the interest of the Government and/or the taxpayer, it may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond.

In relation to the foregoing, Revenue Memorandum Order (**RMO**) No. 42-2010[2], likewise provides that it is only the CTA that has judicial jurisdiction to suspend the collection of taxes but only under certain conditions, that is, when, in its opinion, the collection by the Bureau of Internal Revenue (**BIR**) may jeopardize the interest of the government and/or the taxpayer and which case the CTA may suspend the collection of taxes and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount being assessed.

Corollary thereto, Sections 1[3] and 2[4], Rule 10 of the Revised Rules of the Court of Tax Appeals (**RRCTA**) provide that, by way of exception to the no injunction rule, where the collection of the amount of the taxpayer's liability,

---

1 **SEC. 11**. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture of the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

...

...No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Agriculture, as the case may be shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: <u>*Provided, however*, That when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer, the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court</u>. [Underscoring supplied]

...

2 PROHIBITION ON THE ISSUANCE OF TEMPORARY RESTRAINING ORDERS ON THE COLLECTION OF TAXES AGAINST THE BUREAU OF INTERNAL REVENUE BY COURTS OTHER THAN THE COURT OF TAX APPEALS, THE ISSUANCE OF WARRANTS OF DISTRAINT AND GARNISHMENT, AND/OR LEVY ON FINAL DECISIONS OF THE BUREAU OF INTERNAL REVENUE ON DISPUTED ASSESSMENTS, CASES FILED BEFORE THE COURT OF TAX APPEALS, AND THE SALE OF PROPERTY DISTRAINED AND GARNISHED.

3 **SEC. 1**. *No suspension of collection of tax, except as herein prescribed.* — No appeal taken to the Court shall suspend the payment, levy, distraint, or sale of any property of the taxpayer for the satisfaction of his tax liability as provided under existing laws, except as hereinafter prescribed.

4 **SEC. 2**. *Who may file.* — Where the collection of the amount of the taxpayer's liability, sought by means of a demand for payment, by levy, distraint or sale of any property of the taxpayer, or by whatever means, as provided under existing laws, may jeopardize the interest of the Government or the taxpayer, an interested party may file a motion for the suspension of the collection of the tax liability.

sought by means of a demand for payment by levy or distraint of any property of the taxpayer, may jeopardize the interest of the taxpayer, an interested party may file a motion for suspension of collection of the tax liability.

Clearly, respondent's WDL, which was issued a few days after the promulgation of the Court's Decision, is a summary remedy that may jeopardize petitioner's interest and thus entitles it to file a motion for suspension of the collection of tax while awaiting the finality of the Court's Decision or the resolution of respondent's MR.

Typically, a motion for suspension of collection of the tax is filed prior to the promulgation of the decision or when the court has not yet ruled on the merits of the case; in which case, said motion should be set for hearing.[5]

On the merits of petitioner's Motion for Suspension/Issuance of TRO/Dispensation of Bond (which is akin to an injunction application), petitioner must establish not only the actual and existing right sought to be protected but the urgency of its issuance to prevent grave and irreparable injury as well. Failure to do so will warrant its denial.[6]

The requisites for the issuance of the said injunctive relief must be present, to wit: (1) the existence of a clear and unmistakable right that must be protected; and, (2) an urgent and paramount necessity for the writ to prevent serious damage.[7] To thus grant injunctive relief to respondent, particularly an order of suspension to collect tax, respondent must have shown the urgency, and the imminent and irreparable damage that may result if the complained act of petitioner is not enjoined.

As to the first requisite, petitioner has very well established that it has a right to due process having already obtained a favorable decision from this Court, nullifying and setting aside respondent's subject tax assessment.

As to the second requisite, petitioner has likewise shown that the act sought to be enjoined is imminent because the BIR has already issued and served a WDL against it. As a result, respondent stands to sustain serious and irreparable damage

---

5 **SECTION.** 6. *Hearing of the Motion.* — The movant shall, upon receipt of the opposition, set the motion for hearing at the next available motion day, and the Court shall give preference to the motion over all other cases, except criminal cases. At the hearing, both parties shall submit their respective evidence. If warranted, the Court may grant the motion if the movant shall deposit with the Court an amount in cash equal to the value of the property or goods under dispute or filing with the Court of an acceptable surety bond in an amount not more than double the disputed amount or value. However, for the sake of expediency, the Court, *motu proprio* or upon motion of the parties, may consolidate the hearing of the motion for the suspension of the collection of the tax with the hearing on the merits of the case.

6 *Evy Construction and Development Corporation v. Valiant Roll Forming Sales Corporation*, G.R. No. 207938, 11 October 2017.

7 *Cahambing v. Espinosa, et al.*, G.R. No. 215807, 25 January 2017.

due to the implementation of the WDL as the seizing of its personal and real properties *via* distraint and/or levy would adversely affect the running of its business.

Consequently, petitioner finds itself in a precarious situation wherein, even after securing a favorable decision from Us, it still has to deal with the impending threat of a grave and irreparable injury due to the implementation of respondent's WDL.

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

On the other hand, in petitioner's prayer for dispensation of the bond requirement, respondent invokes the ruling of the Supreme Court in *Spouses Pacquiao v. Commissioner of Internal Revenue*[8] (**Spouses Pacquiao**) that, whenever the Court determines that the method employed by the CIR in the collection of tax is not sanctioned by law, the bond requirement under Section 11 of RA 1125 should be dispensed with.

Having already voided the subject tax assessment in the Decision dated 16 November 2020, it necessarily follows that respondent's WDL is likewise void and thus cannot be enforced against petitioner.

Applying the ruling in *Spouses Pacquiao*, since the collection of the tax itself is not sanctioned by law, it is no longer necessary for petitioner to deposit or file a bond as a condition precedent to suspend the tax collection. The purpose of the rule is not only to prevent jeopardizing the interest of the taxpayer, but more importantly, to prevent the absurd situation wherein the Court would declare that the collection by the summary methods of distraint and levy was violative of law, and then, in the same breath require the taxpayer to deposit or file a bond as a prerequisite for the issuance of a writ of injunction.[9]

It is also propitious to state that respondent issued the subject WDL without awaiting the Court's resolution of his own MR and *despite* the 16 November 2020 Decision voiding his assessment of petitioner. So, given the Court's Decision in petitioner's favor, the implementation of petitioner's WDL is *violative* of the latter's right to due process and is tantamount to a mockery of the proceedings before the Court.

---

8 G.R. No. 213394, 06 April 2016.
9 *Id.*

x - x

Here, We are asked to enjoin respondent's summary action for collection against petitioner, which could effectively *render nugatory* our 16 November 2020 Decision and *preempt* our resolution of the former's MR (on the said 16 November 2020 Decision).

While there is no law or rule of procedure preventing respondent from pursuing the assessment at this point, prudence and logic dictate that respondent, under the circumstances, should have waited for the Court's resolution of his MR not only to avoid such unnecessary imposition upon petitioner but more so as an observance on his part in preserving and upholding the public trust in the Judiciary as an institution of the Government (to which he similarly belongs) and the arbiter of legal disputes.

On a final note, tax assessments issued in violation of the due process rights of a taxpayer are null and void.[10] While the government has an interest in the swift collection of taxes, the BIR and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with the law, with their own rules of procedure, and always with regard to the basic tenets of due process.[11]

All told, I vote to **GRANT** petitioner Marketing Convergence Inc.'s Motion for Suspension/Issuance of TRO/Dispensation of Bond and **DENY** respondent Commissioner of Internal Revenue's Motion for Reconsideration.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

---

[10] *Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc.*, G.R. Nos. 201398-99 & 201418-19, 03 October 2018.

[11] *Id.*