CTA Form No. 8

21-000107-0054

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10477

DANTE R. GUTIERREZ,
Petitioner,

- versus -

NOTICE OF DECISION

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo St., Legazpi Village
Makati City

ATTY. LARA NICOLE T. GONZALES
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor Santiago Ave., Diliman, Quezon City

VIRAY VIRAY BALATBAT YUMUL and UTULO LAW OFFICE
Room 201, 2nd Floor, St. Anthony Drug 2 Building
B. Mendoza St., Sto. Rosario (Poblacion)
City of San Fernando, Pampanga

GREETINGS:

You are hereby notified by these presents that on **May 10, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 13, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

DANTE R. GUTIERREZ,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10477

Members:
DEL ROSARIO, PJ, *Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:
MAY 10 2024; 2:30PM

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DECISION

REYES-FAJARDO, J.:

Before the Court is an Amended Petition for Review[1] filed by Dante R. Gutierrez against respondent Commissioner of Internal Revenue (CIR), praying for the *suspension* of collection of alleged deficiency income tax and value-added tax (VAT) relative to taxable years (TYs) 2006 and 2007, the *nullification* of the related deficiency income tax and VAT assessments and *lifting* of the twelve (12) Warrants of Garnishment issued against petitioner, and the *reversal* of the CIR's ruling which denied petitioner's Application for Compromise *or,* alternatively, the *return* of the amount of ₱4,858,823.19, representing petitioner's payment pursuant to an Offer of Compromise.

FACTS

The antecedents leading to the filing of the present petition are narrated below.

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[1] Docket - Vol. 1, pp. 83-105.

Proceedings at the administrative level.

The CIR, through Jethro M. Sabariaga, OIC-Regional Director, BIR Revenue Region No. 4, issued the following Warrants of Garnishment, all dated October 3, 2016:

Exh. No.	Ref. No.	Bank	Subject TY
P-11[2]	WG-2016-RR4-AMS-003002	Bank of the Philippine Islands	2006
P-11-1[3]	WG-2016-RR4-AMS-003003	BPI-Family Savings Bank	2006
P-11-2[4]	WG-2016-RR4-AMS-003004	Banco De Oro Universal Bank	2006
P-11-3[5]	WG-2016-RR4-AMS-003005	Metropolitan Bank & Trust Company	2006
P-11-4[6]	WG-2016-RR4-AMS-003006	China Banking Corporation	2006
P-11-5[7]	WG-2016-RR4-AMS-003007	United Coconut Planters Bank	2006
P-11-6[8]	WG-2016-RR4-AMS-003008	Security Bank	2006
P-11-7[9]	WG-2016-RR4-AMS-003009	Philippine Savings Bank	2006
P-11-8[10]	WG-2016-RR4-AMS-003010	Philtrust Bank	2006
P-11-9[11]	WG-2016-RR4-AMS-003011	Philippine National Bank/ Allied Banking Corporation	2006
P-11-10[12]	WG-2016-RR4-AMS-003012	Land Bank of the Philippines	2006
P-12[13]	WG-2016-RR4-AMT-003084	United Coconut Planters Bank	2007

The above-enumerated warrants were served upon the banks on October 25, 2016, notifying them that petitioner owed deficiency taxes amounting to ₱118,339,832.77 and ₱124,422,657.79 relative to TY 2006[14] and 2007,[15] respectively. The supposed assessments bore the following details:

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2 Docket - Vol. 1, p. 531.
3 Docket - Vol. 1, p. 532.
4 Docket - Vol. 1, p. 533.
5 Docket - Vol. 1, p. 534.
6 Docket - Vol. 1, p. 535.
7 Docket - Vol. 1, p. 536.
8 Docket - Vol. 1, p. 537.
9 Docket - Vol. 1, p. 538.
10 Docket - Vol. 1, p. 539.
11 Docket - Vol. 1, p. 540.
12 Docket - Vol. 1, p. 541.
13 Docket - Vol. 1, p. 542.
14 Exhibit Nos. "P-11" to "P-11-10," Docket - Vol. 1, pp. 531-541.
15 Exhibit No. "P-12," Docket - Vol. 1, p. 542.

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Assessment/Demand No.	Date Issued	Tax Type	2006	2007
F-21B-LNTF-06-IT-0056	Jul. 12, 2010	IT	₱37,153,918.00	
F-21B-LNTF-06-VT-0056	Jul. 12, 2010	VAT	14,276,741.00	
F-21B-LNTF-07-IT/VT-007	Oct. 12, 2010	IT		₱37,113,278.18
F-21B-LNTF-07-IT/VT-007	Oct. 12, 2010	VAT		14,292,313.64
Subtotal			₱51,430,659.00	₱51,405,591.82
Add: Delinquency penalties			66,909,173.77	73,017,065.97
Total			**₱118,339,832.77**	**₱124,422,657.79**

The issuance of the Warrants of Garnishment prompted petitioner to file separate Letters of Protest/Requests for Reconsideration[16] dated October 25[17] and October 26, 2016[18] addressed to the Regional Director.

In a letter[19] dated November 3, 2016, petitioner[20] submitted an Offer of Compromise to the Regional Director expressing his willingness to pay the amount of ₱1.5 million, on installment basis, in settlement of the alleged deficiency taxes for which he has been held liable. He reasoned as follows:

> Thru me, Mrs. Evelyn Gutierrez-Torres, in her ardent desire to put closure to this matter, would like to reiterate her request and offer of compromise for his brother, Dante Gutierrez, due to the following reasons:
>
> 1. Mr. Dante Gutierrez is not in the best of health. He recently underwent an operation for a gastrointestinal problem and already had two (2) heart angioplasties. These have taken a great toll, not only on his health, but also his finances.
>
> 2. Mr. Dante Gutierrez is already a senior citizen. Together with his health condition, his age requires him to live a non-stressful life. He would like to settle this matter which is giving him so much stress now.
>
> 3. Peace of mind is of utmost importance to Mr. Dante Gutierrez. This matter, coupled with other financial problems, is giving him sleepless nights and is aggravating his health condition.

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16 Pars. 3 and 4, Joint Stipulation of Facts and Issues, Docket - Vol. 1, pp. 374-375.

17 Relative to Warrant of Garnishment Nos. WG-2016-RR4-AMT-003084; Exhibit "P-3," Docket - Vol. 1 - pp. 489-494.

18 Relative to Warrant of Garnishment Nos. WG-2016-RR4-AMS-003002 to 003012; Exhibit "P-4," Docket - Vol. 1, pp. 495-500.

19 Exhibit "P-6," Docket - Vol. 1, pp. 505-506.

20 Through Orlando S. David, petitioner's attorney-in-fact.

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4. Presently, Mr. Dante Gutierrez has no steady source of income and his current financial standing can hardly cover his medical needs.

5. Labor problems instigated by the KMU years ago led to the closure of his company/business, not to mention the foreclosure of all his properties.

6. The amount that Mrs. Torres is offering you as compromise are sourced from financial aid from her and other relatives and friends, from whom she solicited help.

7. Mrs. Torres does not want to further burden concerned friends and relatives with his brother's problems. Because they care, they are affected.

8. The amount that Mrs. Torres is offering you, though just a compromise amount, will be of help to the government's revenue collection efforts.

It appears from the above-quoted letter that petitioner submitted the following documents to the Regional Director:

1. Initial medical records of Dante R. Gutierrez (other documents to follow)

2. Photocopies of Various Titles with mortgages that are currently under Foreclosure proceedings

3. Pictures of the present physical condition of the previous office, shade and premises, whose Lpgas refilling business operations was similar to a regular gasoline refilling station, and which as been closed/abandoned since 2008.

Subsequently, on March 1, 2017, petitioner filed Applications for Compromise Settlement (BIR Form No. 2107)[21] before respondent CIR and paid[22] the aggregate amount of ₱4,858,823.19, representing 10% of the basic tax assessed[23] as settlement of his deficiency income tax and VAT liabilities relative to TYs 2006 and 2007, *viz.*:

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[21] Exhibit "P-7," Docket - Vol. 1, p. 507.

[22] Compromise relative to income tax was paid in three equal installments. See Exhibits "P-7," "P-8," "P-9," and "P-10;" Docket - Vol. 1, pp. 508-513, 515-516, 520-525, 529-530.

[23] Based on Assessment No. F-21B-LNTF-06-IT-0056, as referred to in the Application for Compromise (Id.), the basic tax amounted to ₱16,761,166.00.

Exh.	Assessment Referred To	Tax Type	TY	Basic Tax	Offer of Compromise	Total
P-7	F-21B-L NTF-06-IT-0056	IT	2006	₱16,761,166.00	₱1,676,116.60	
P-8	F-21B-LNTF-06-VT-0056	VAT	2006	₱6,298,562.00	629,856.20	₱2,305,972.80
P-9	**F-21B-LNTF-07-IT/VT-007**	**IT**	**2007**	**₱18,556,639.18**	**1,855,663.92**	
P-10	**F-21B-LNTF-07-IT/VT-007**	**VAT**	**2007**	**₱6,971,864.69**	**697,186.47**	**2,552,850.39**
						₱4,858,823.19

In all of these applications, petitioner cited "financial incapacity" as his sole ground for compromise.[24]

The BIR[25] wrote a letter[26] dated January 7, 2021, notifying petitioner that his application for compromise relative to TY 2007 internal revenue taxes has been disapproved by the Evaluation Board.

Subsequently, respondent CIR issued the assailed Notice of Denial, [27] refusing petitioner's offer of compromise as settlement of alleged deficiency taxes relative to **TY 2007.** The CIR did not find merit in petitioner's ground for compromise settlement. It reasoned that while the taxpayer asserted that his real properties have been mortgaged, the Transfer Certificates of Title of these properties revealed that most mortgages have already been cancelled. Resultantly, respondent requested petitioner to pay the amount of ₱48,852,741.43, as computed below, plus all increments incidental to the delinquency.

Assessment Referred To	Tax Type	Amount
F-21B-LNTF-07-IT/VT-007	IT	₱37,113,278.18
F-21B-LNTF-07-IT/VT-007	VAT	14,292,313.64
Subtotal		₱51,405,591.82
Less Payment		(2,552,850.39)
Total		₱48,852,741.43

This denial came with a warning that upon petitioner's failure to pay, the tax authorities would be constrained to resort to summary administrative collection measures.

[24] In accomplishing the BIR Form No. 2107, petitioner opted to avail of the "10%" option in the computation of the amount of compromise settlement. It was clearly stated in said form that the 10% option is available in applications lodged on the ground of "financial incapacity."

[25] Through Nanette S. Nievera, Chief, Collection Division, BIR Revenue Region No. 4, San Fernando, Pampanga.

[26] Exhibit "P-2," Docket – Vol. 1, p. 488.

[27] Exhibit "P-1," Docket – Vol. 1, p. 487.

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Alleging to have received the Notice of Denial only on February 11, 2021, Gutierrez filed a Petition for Review before the Court on March 5, 2021, which he amended thereafter. He prays:

> 1. That an Order be issued granting Petitioner's 'Motion to Suspend Collection of Deficiency Income Taxes and Value Added Taxes for the Taxable Years 2006 and 2007';
>
> And after hearing and trial on the merits,
>
> 2. That a Resolution be issued declaring the deficiency income tax and value-added tax assessments versus the Petitioner Dante R. Gutierrez for the Taxable Years 2006 and 2007 null and void, for violation of the Petitioner's right to due process;
>
> 3. That a Resolution be issued declaring the deficiency income tax and value-added tax assessments versus the Petitioner Dante R. Gutierrez for the Taxable Years 2006 and 2007 prescribed;
>
> 4. That a Resolution be issued declaring the deficiency income tax and value-added tax assessments versus the Petitioner Dante R. Gutierrez for the Taxable Years 2006 and 2007 null and void, for lack of legal and factual basis to support them;
>
> 5. That a Resolution be issued lifting Warrants of Garnishment No. WG-2016-RR4-AMS-003002 to 003012 and Warrant of Garnishment No. WG-2016-RR4-AMT-003084;
>
> 6. That a Resolution be issued commanding the Respondent BIR to return to the Petitioner any and all payments made by the Petitioner by way of Offer of Compromise, in the total amount of Four Million Eight Hundred Fifty-Eight Thousand Eight Hundred Twenty-Three Pesos and Nineteen Centavos (Php4,858,823.19);
>
> 7. In the alternative, that a Resolution be issued reversing and/or setting aside the Notice of Denial of Petitioner's Application for Compromise, and that in lieu thereof, an Order be issued approving the Compromise between the BIR and the Petitioner.

Stated differently, petitioner seeks the *suspension* of collection of alleged deficiency income tax and value-added tax (VAT) relative to TY 2006 and 2007, the *nullification* of the related deficiency income tax and VAT assessments and *lifting* of the twelve (12) Warrants of Garnishment issued against petitioner, and the *reversal* of the CIR's ruling which denied petitioner's Application for Compromise *or*, alternatively, the *return* of the amount of ₱4,858,823.19, representing petitioner's payment pursuant to an Offer of Compromise.

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Proceedings before the Court.

Respondent filed his Answer[28] on October 27, 2021.

In the Resolution dated December 16, 2021,[29] the parties were ordered to immediately proceed and to personally appear, or through their authorized representative, before the Philippine Mediation Center-Court of Tax Appeals (PMC-CTA) on January 28, 2022. However, on March 29, 2022, the PMC-CTA submitted a report stating that petitioner refused to go to mediation.[30]

In the meantime, on March 4, 2022, respondent transmitted the BIR Records for the present case.[31]

The Pre-Trial Conference was set and held on June 23, 2022.[32] Prior thereto, Respondent's Pre-Trial Brief was filed on May 17, 2022,[33] while the Pre-Trial Brief (for the Petitioner) was electronically filed on June 21, 2022,[34] and hard copy thereof was received by the Court on June 22, 2022.[35]

On July 4, 2022, the parties electronically filed their *Joint Stipulation of Facts and Issues*,[36] which was approved by the Court in the Resolution dated July 29, 2022,[37] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated August 25, 2022 was then subsequently issued.[38]

The case proceeded to trial.

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[28] Docket - Vol. 1, pp. 253-274.
[29] Docket - Vol. 1, pp. 285-286.
[30] Back To Court issued by the PMC-CTA, Docket - Vol. 1, p. 292.
[31] *Compliance* dated March 4, 2022, Docket - Vol. 1, pp. 287-289.
[32] Resolution dated April 12, 2022, Docket - Vol. 1, p. 296; Notice of Pre-Trial Conference dated April 20, 2022, Docket - Vol. 1, pp. 297-299; Minutes of the hearing held on, and Order dated, June 23, 2022, Docket - Vol. 1, pp. 341-346.
[33] Docket - Vol. 1, pp. 309-312.
[34] Docket - Vol. 1, pp. 315-326.
[35] Docket - Vol. 1, pp. 328-338.
[36] Docket - Vol. 1, pp. 360-369.
[37] Docket - Vol. 1, pp. 402-403.
[38] Docket - Vol. 1, pp. 445-458.

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Petitioner offered his testimony,[39] and that of his former employee, Mr. Orlando S. David.[40] He submitted his Formal Offer of Evidence on October 27, 2022.[41] Subsequently, after respondent's filing of a Comment/Opposition,[42] the Court resolved[43] to admit all of petitioner's offered exhibits.

On the other hand, after presenting the testimony of Revenue Officer Trixia May C. Rivera,[44] respondent CIR filed its Formal Offer of Evidence[45] on February 7, 2023. Similarly, after petitioner's filing of a Comment/Opposition,[46] the Court also resolved[47] to admit all of respondent's offered exhibits.

After the parties' filing of their respective Memoranda,[48] the present case was submitted for decision on May 10, 2023.[49]

ISSUES

The parties have stipulated[50] the following issues for the Court's resolution, to wit:

A. Whether the Honorable Court has jurisdiction over the instant case.

B. Whether petitioner is liable to pay deficiency Income Tax and Value-Added Tax plus additional interest for taxable years 2006 and 2007.

C. Whether or not there is a basis for the denial of the Petitioner's Offer of Compromise.

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[39] Exhibit "P-17", Docket – Vol. 1, pp. 153-168; Minutes of hearing held on, and Order dated September 22, 2022, Docket - Vol. 1, pp. 460-464-A.
[40] Exhibit "P-16", Docket – Vol. 1, pp. 405-419; Minutes of hearing held on, and Order dated August 23, 2022, Docket - Vol. 1, pp. 437-439.
[41] Docket - Vol. 1, pp. 465-475.
[42] Docket - Vol. 1, pp. 477-486.
[43] In a Resolution dated December 1, 2022, Docket - Vol. 2, pp. 572 to 574.
[44] Exhibit "R-7", Docket – Vol. 1, pp. 391-396; Minutes of the hearing held on, and Order dated, January 17, 2023, Docket - Vol. 2, pp. 576-[579].
[45] Docket - Vol. 2, pp. 580-584.
[46] Docket - Vol. 2, pp. 587-592.
[47] In a Resolution dated March 29, 2023, Docket – Vol. 2, pp. 587-592.
[48] For respondent, Docket - Vol. 2, pp. 609-625; for petitioner, Docket - Vol. 2, pp. 628-654.
[49] Notice of Resolution dated May 10, 2023, Docket - Vol. 2, p. 684.
[50] Stipulation of Issues, Joint Stipulation of Facts and Issues, Docket - Vol. 1, p. 362.

Petitioner's Arguments

Gutierrez argues as follows: *First,* the Court has jurisdiction over the present case. *Second,* he is not liable to pay deficiency income tax and VAT, plus additional interest, for TYs 2006 and 2007. *Third,* he was deprived of his right to due process when his bank account was garnished by the BIR without any prior sending out or petitioner's receipt of any letter of authority (LOA), pre-assessment notice (PAN), assessment notice or formal letter of demand (FAN/FLD) anent the supposed deficiency income taxes and VAT, for TYs 2006 and 2007. *Fourth,* the CIR's right to assess and collect the supposed deficiency taxes has prescribed. *Fifth,* the CIR's assessments, collection measures, and Notice of Denial of petitioner's Application for Compromise in settlement of the alleged deficiency taxes relative to TY 2007 do not have any basis.

Respondent's Arguments

The CIR counters as follows: *First,* the Court has no jurisdiction over the instant petition because the assessments have already become final, executory and demandable. *Second,* a compromise is a contract between the government and the taxpayer. Thus, consent is essential. Courts cannot force the parties to enter into a compromise. A compromise is a waiver on the part of the government of its right to receive the contribution from its inhabitants; it must be voluntary. *Third,* when petitioner received the collection notices, it is already apparent that respondent is pursuing collection remedies against the final assessment against petitioner. Hence, within the time allowed, reckoned from the date of notice of said collection remedies, he should have already filed his petition for review before the Court, instead of waiting for the denial of his administrative application for compromise.

OUR RULING

The Petition for Review is unmeritorious.

Jurisdiction of the Court.

At the outset, We point out that it appears from petitioner's prayers that he calls upon the Court to review not only the CIR's *Notice of Denial,* but also the related *Warrants of Garnishment* and supposed *tax assessments* issued against petitioner.

A. CIR's Notice of Denial is reviewable by the Court

The law confers exclusive appellate jurisdiction upon the Court to review the CIR's decision/inaction on disputed assessments and "other matters" arising from the Bureau of Internal Revenue (BIR)'s administration of tax laws and regulations.[51]

The Court has jurisdiction over the present petition inasmuch as it assails respondent CIR's disapproval of petitioner's Application for Compromise Settlement of alleged deficiency taxes relative to TY 2007, as embodied in the subject Notice of Denial.

The CIR's power to compromise the payment of any internal revenue tax under Section 204(A) of the National Internal Revenue Code, as amended (Tax Code) provides:

> SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — The Commissioner may —
>
> xxx xxx xxx
>
> (A) Compromise the payment of any internal revenue tax, when:
>
> (1) A reasonable doubt as to the validity of the claim against the taxpayer exists; or
>
> (2) The financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.
>
> The compromise settlement of any tax liability shall be subject to the following minimum amounts:

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[51] Section 7(a)(1), Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282.

> For cases of financial incapacity, a minimum compromise rate equivalent to ten percent (10%) of the basic assessed tax; and
>
> For other cases, a minimum corporate rate equivalent to forty percent (40%) of the basic assessed tax.
>
> Where the basic tax involved exceeds One million pesos (P1,000,000) or where the settlement offered is less than the prescribed minimum rates, the compromise shall be subject to the approval of the Evaluation Board which shall be composed of the Commissioner and the four (4) Deputy Commissioners."

It is clear that the CIR's denial of an offer of compromise comes within Our jurisdiction under "other matters" reviewable by the Court, as provided in Section 7(a)(1) of R.A. No. 1125, as amended by R.A. No. 9282.

Whether an offer to compromise is acceptable or not is subject to the CIR's sole discretion. However, certainly, this authority is not absolute. When the CIR fails to exercise this power within the parameters set by the law, the Court is vested with authority to review respondent's actions and determine whether there has been any abuse of discretion.[52]

Significantly, subject of the assailed Notice of Denial is petitioner's Application for Compromise Settlement of internal revenue taxes relative to TY 2007. **Respondent has yet to decide on petitioner's application covering TY 2006.**[53] Thus, to clarify, this Court's jurisdiction to entertain the present Amended Petition for Review shall be limited to the review of the CIR's refusal to enter into the proposed compromise of **internal revenue taxes covering TY 2007** only.

B. The Court does not have jurisdiction to review the supposed tax assessments.

At the outset, We refer to an earlier CTA Division ruling in the case of *Fernandez v. Dulay*.[54] The Court was also tasked to review the

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[52] *Philippine National Oil Co. v. Court of Appeals*, G.R. Nos. 109976 & 112800, April 26, 2005, 496 PHIL 506-636. Also see *Fernandez v. Dulay*, C.T.A. Case No. 9908, March 24, 2023.

[53] *Transcript of Stenographic Notes (TSN)* at the hearing held on September 22, 2022, p. 15.

[54] C.T.A. Case No. 9908, March 24, 2023.

CIR's decision on a taxpayer's applications for compromise and, in resolving the appeal, the Court touched upon the validity of the underlying assessment, *viz.*:

> At this juncture, this Court finds that in order to determine whether the denial of petitioner's offer of compromise settlement was proper, there is a need to first delve into the validity of the subject deficiency tax assessment.
>
> Simply put, it is necessary to first make a determination as to whether the assessment was valid, and if respondent may validly collect the subject deficiency taxes. If it is concluded that there was a violation of petitioner's right to substantive or procedural due process, then the subject tax assessment would be declared void.
>
> A void assessment bears no fruit. It cannot attain finality, nor can any collection of tax resulting therefrom be sustained by this Court. Consequently, there would have been no basis to deny petitioner's request to pay five percent (5%) of basic deficiency taxes as compromise settlement, despite being below the required percentage for assessments of doubtful validity, as stated in Revenue Regulations No. 30-2002.

It must be underscored that the ground cited to support the applications for compromise in *Fernandez v. Dulay* was "**doubtful validity of assessment**." To determine whether the CIR ruled correctly on the applications, it was necessary for the Court to inquire into the assessments, inasmuch as the doubtful validity thereof was the particular ground relied upon in the applications.

However, in the present case, in reviewing the CIR's Notice of Denial, We may not digress into the validity of any underlying tax assessment. Unlike in *Fernandez v. Dulay*, herein petitioner applied for compromise on account of his alleged **financial incapacity** to settle the tax assessments against him. In turn, respondent CIR denied petitioner's application precisely because it did not find merit in the claim of financial incapacity.

Thus, Our review shall be confined to the correctness of the CIR's Notice of Denial. There is no reason for Us to touch upon the matters of assessment and collection, notwithstanding the parties' express stipulations. The basic rule is that jurisdiction over the subject matter cannot be fixed by mere agreement between the parties or by erroneous belief of the court that it exists.[55] The Court's authority to

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[55] *Velasquez, Jr. v. Lisondra Land, Inc.*, G.R. No. 231290, August 27, 2020.

review the CIR's actions covers all matters arising from the tax authorities' administration of tax laws and regulations. While expansive, Our jurisdiction does not allow Us to entertain questions which are clearly outside and not dealt with by the assailed CIR ruling.

C. The Court does not have jurisdiction to review the subject Warrants of Garnishment.

Collection measures employed by the tax authorities are also reviewable by the Court under "other matters" pursuant to Section 7(a)(1) of R.A. No. 1125, as amended by R.A. No. 9282. The Supreme Court discussed this matter in *Commissioner of Internal Revenue v. Bank of the Philippine Islands*,[56] *viz.*:

> As the CTA correctly pointed out, BPI did not come to question any final decision issued in connection with Citytrust's assessments. They went before the CTA primarily to assail the November 2011 Warrant's issuance and implementation. To be sure, the issue for the CTA to resolve was the propriety not of any assessment but of a tax collection measure implemented against BPI. Accordingly, the CTA's disposition was distinctly for the cancellation of the warrant and nothing else.
>
> The law expressly vests the CTA the authority to take cognizance of "other matters" arising from the 1977 Tax Code and other laws administered by the BIR which necessarily includes rules, regulations, and measures on the collection of tax. Tax collection is part and parcel of the CIR's power to make assessments and prescribe additional requirements for tax administration and enforcement.

Verily, the Warrants of Garnishment issued by respondent in this case were attempts to collect alleged deficiency taxes from petitioner. Petitioner acknowledged having been notified of the garnishment in question as early as **October 13, 2016**[57] **and October 25, 2016.**[58]

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[56] G.R. No. 227049, September 16, 2020.
[57] Exhibit "P-3," Docket, p. 489.
[58] Exhibit "P-4," Docket, p. 495.

However, instead of appealing the Warrants of Garnishment to the Court within 30 days[59] from notice, petitioner elevated these matters to the Regional Director through Letters of Protest/Requests for Reconsideration filed on October 25, 2016.

It is clear that when the instant petition was filed on **March 5, 2021**, petitioner had known of the garnishment **for over four years** already. Certainly, the period to question the Warrants of Garnishment before the Court had already lapsed. Stated differently, the judicial protest, particularly, to the BIR's collection measures was belated. The Court does not have jurisdiction to entertain any question pertaining to these matters over and beyond the 30-day prescriptive period.

Petitioner failed to demonstrate error in the CIR's decision to deny his application.

To recall, the application for compromise settlement of alleged deficiency taxes relative to TY 2007 was founded upon petitioner's alleged financial incapacity. In an earlier letter,[60] it was intimated, among others, that he had no steady source of income and that all of his properties have been foreclosed. In turn, respondent CIR issued the Notice of Denial, after finding that most of the supposed mortgages on have already been cancelled, as evidenced by the relevant annotations on various Transfer Certificates of Title of petitioner's properties.[61]

Petitioner is now before Us, asserting that respondent's denial was baseless. He denies having properties that are free from liabilities/encumbrances, insists that these have been foreclosed and/or have remained under litigation.

However, petitioner did not offer any evidence in support of this. Furthermore, respondent denied petitioner's application after examining the submissions and, thereafter, provided a clear explanation for the denial. Thus, there is no basis for Us to overturn the Notice of Denial, as requested by petitioner.

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[59] Section 11, R.A. No. 1125, as amended by R.A. No. 9262.
[60] Exhibit "P-6," Docket, p. 505-506.
[61] Exhibit "P-1," Docket, p. 487.

It is incumbent upon the taxpayer to convince the appellate court that the assailed administrative ruling lacks legal or factual basis.[62] We must uphold the CIR's ruling in the absence of any clear showing of error or grave abuse on the part of respondent.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

(With Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice

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[62] Under Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals, the CIR's ruling or decision is appealable to the CTA *via* a Petition for Review as provided in Rule 42 of the Rules of Court. Pursuant to Rule 42, Section 2, this Court shall review errors of fact or law, or both, allegedly committed by the CIR in its decision, as specified in the petition for review (See *Intramuros Administration v. Offshore Construction Development Co.*, G.R. No. 196795, March 7, 2018.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

DANTE R. GUTIERREZ,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10477

Members:

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

Promulgated:

MAY 10 2024 2:30PM

x - x

DISSENTING OPINION

***DEL ROSARIO, P.J.*:**

With due respect, I am constrained to withhold my assent in the *ponencia*.

In *Commissioner of Internal Revenue vs. Oriental Assurance Corporation*,[1] the Supreme Court explained that in the absence of any grave abuse of discretion, the authority of the Commissioner of Internal Revenue (CIR) to compromise is purely discretionary and the courts cannot interfere with his exercise of discretionary functions.

Very recently, in *Commissioner of Internal Revenue vs. Tridharma Marketing Corporation*,[2] the Supreme Court elucidated that "although Tridharma's initial petition pertained to the CIR's Notice of Denial regarding its application for a compromise settlement, the CTA Second Division was justified in nullifying the assessments against Tridharma based on its finding of the absence of a valid [Letter of Authority (LOA)]. Said the Supreme Court:

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[1] G.R. No. 251677, July 28, 2021 (Notice of Resolution).
[2] G.R. No. 261787, October 4, 2023 (Notice of Resolution).

> At this juncture, the Court wishes to elucidate that, although Tridharma's **initial petition pertained to the CIR's Notice of Denial regarding its application for a compromise settlement**, the CTA Second Division was **justified in nullifying the assessments** against Tridharma based on its finding of the absence of a valid LOA.
>
> To reiterate, 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.
>
> The importance of the lack of the revenue officer's authority to conduct an audit cannot be overemphasized because it goes into the intrinsic validity of the assessment itself. **The lack of authority of the revenue officers is tantamount to the absence of an LOA itself which results to a void assessment. Being a void assessment, the same bears no fruit.**
>
> Such is the importance of having the requisite LOA, that **even if a taxpayer fails to raise at the earliest opportunity the lack of the revenue officer's authority, the Court is not precluded from considering the same because the said issue goes into the intrinsic validity of the assessment itself.**
>
> Furthermore, Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, empowers the CTA to rule upon related issues necessary to achieve an orderly disposition of a case. The said provision reads:
>
>> SECTION 1. Rendition of judgment. – xxx
>>
>> In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case. xxx
>
> Ultimately, in light of the **inherent significance and essentiality of the requirement pertaining to the issuance of an LOA**, the CTA Second Division correctly and judiciously acknowledged the matter and **rendered the appropriate decision to cancel and set aside the assessments** issued by the CIR against Tridharma.

Prescinding from the foregoing, I submit that with regard to the CIR's exercise of his authority to compromise, the general rule is that the Court cannot interfere with such purely discretionary exercise, absent grave abuse of discretion. **Nonetheless, the CTA has sufficient authority to nullify an assessment subject of the offer of compromise in cases where the assessment is intrinsically void.**

In the present case, the offer of compromise was based on petitioner's financial incapacity. It is then incumbent upon petitioner to prove, by substantial evidence, that he is financially incapable to settle his deficiency tax liabilities. I agree that petitioner failed to prove the CIR's grave abuse of discretion in rejecting his offer of compromise.

Notwithstanding petitioner's failure to prove the CIR's grave abuse of discretion and even though not raised as an issue by the parties, **the Court is not precluded in determining whether the Revenue Officers (ROs) who conducted the audit of petitioner were validly authorized to do so**.

Parenthetically, the authority of the ROs to conduct an audit and the receipt by petitioner or even the very existence of the assessment notices was not duly established. Petitioner repeatedly denied that he received an LOA. Aside from the LOA, petitioner likewise denied having received any assessment notice. It is now incumbent upon respondent to show that the LOA and the assessment notices were sent to and received by petitioner.

A thorough examination of the BIR Records confirms the absence of an LOA and assessment notices. This is further corroborated by the testimony of respondent's witness RO Trixia May C. Rivera. In the hearing on January 17, 2023, petitioner's counsel Atty. Raymond F.L. Viray cross-examined RO Rivera. **She testified that the BIR Records did <u>not contain an LOA</u>, a Notice of Informal Conference, a Preliminary Assessment Notice, a Formal Letter of Demand/Final Assessment Notice (FLD/FAN), and a Final Decision on Disputed Assessment.**[3]

In fine, *sans* authority of the ROs to conduct an audit and evidence of the issuance and receipt by petitioner of the assessment notices, the entire assessment process is inescapably void.

Not only that, it also appears that the CIR may no longer collect the deficiency tax liabilities for 2007 as his right to do so has already prescribed.

In *Commissioner of Internal Revenue vs. CTA, Second Division and QL Development, Inc.*,[4] citing *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*,[5] the Supreme Court reiterated that in cases of assessments issued within the three (3)-year

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[3] TSN dated January 17, 2023, pp. 16-19.
[4] G.R. No. 258947, March 29, 2022.
[5] G.R. No. 197515, July 2, 2014.

ordinary period to assess, the CIR has another three (3) years to collect the assessed tax.

With respect to the FLD/FAN for 2007 which was **purportedly** issued on October 12, 2010 or within the three-year ordinary period to assess, the CIR had another three (3) years to initiate the collection of taxes by distraint or levy or court proceeding. Assuming the FLD/FAN was served to petitioner on October 12, 2010, the CIR had three (3) years reckoned from said date or until **October 12, 2013** to enforce collection of the assessed deficiency taxes. Verily, prescription had already set in when the CIR initiated its collection efforts only in **2016**.

ALL TOLD, I *VOTE* to (1) grant the Petition for Review; (2) cancel and set aside the assessment for being issued without the requisite LOA; and, (3) declare that the CIR's right to collect has prescribed.

ROMAN G. DEL ROSARIO
Presiding Justice