REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HEMISPHERE-LEO BURNETT, INC.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE, CAESAR R. DULAY, OIC-ASSSISTANT COMMISSIONER OF LARGE TAXPAYERS SERVICE, TERESITA M. ANGELES, AND THE BUREAU OF INTERNAL REVENUE,
Respondents.

CTA CASE NOS. 9749

Members:
Castañeda, Jr., *Chairperson,*
Mindaro-Grulla, and,
Bacorro-Villena, *JJ.*

Promulgated:

JUN 03 2020 2:00 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

THE CASE

This case involves a *Petition for Prohibition and Injunction under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI)* filed by petitioner Hemisphere-Leo Burnett, Inc. against respondents Commissioner of Internal Revenue (CIR) Caesar R. Dulay of the Bureau of Internal Revenue (BIR), OIC-Assistant Commissioner Teresita M. Angeles of the Large Taxpayers Service, and the BIR.

THE PARTIES

Petitioner Hemisphere-Leo Burnett, Inc. is a corporation duly organized and registered with the Philippine Securities and Exchange Commission on August 3, 1983, with Company Registration No. 44383 and business address at 24th Floor, Tower 2, The Enterprise Center, 6766 Ayala Ave. corner Paseo de Roxas, Makati City. Its primary purpose is "To engage in the general advertising agency and sales promotion business."[1]

Petitioner is a VAT-registered entity with the BIR under Certificate of Registration No. RC0000015738 dated June 30, 1994 and Tax Identification Number (TIN) 000-123-509-000. It is currently classified as large taxpayer under the jurisdiction of BIR Revenue District Office (RDO) No. 126 – Regular LT Division III.[2]

Respondent CIR is the duly appointed Commissioner of the BIR, who is vested with the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the NIRC of 1997, as amended, or other laws or portions thereof administered by the BIR.[3]

Respondent Teresita M. Angeles is the OIC-Assistant Commissioner of the Large Taxpayers Service of the BIR RDO No. 126 – Regular LT Division III, who is under administration and supervision of respondent CIR, and vested with authority provided by law and as may be delegated by the latter.[4]

Respondent BIR is an agency administered by the Commissioner of Internal Revenue, with powers and duties to assess and collect all national internal revenue taxes, fees, and charges, and to enforce all forfeitures, penalties and fines connected with assessment and collection of taxes.[5] jc

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[1] Par. 8, *Petition for Prohibition and Injunction under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI)* (hereinafter referred to as *"Petition"*) vis-à-vis Par. 1, *Answer With Opposition (to the Petition for Prohibition and Injunction under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction)* (hereinafter referred to as *"Answer"*), Docket – Vol. I, pp. 11, and 177, respectively.

[2] Par. 10, *Petition*, vis-à-vis Par. 1, *Answer*, Docket – Vol. I, pp. 12, and 177, respectively.

[3] *Id.*

[4] *Id.*

[5] *Id.*

Respondent CIR and respondent Angeles hold office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[6]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On December 13, 2017, petitioner received the assailed Letter of Authority (LOA) No. SN: eLA 201500089752 dated November 21, 2017 which was signed by respondent OIC-AC Teresita M. Angeles of the Large Taxpayers Service, BIR-RDO No. 126, Regular LT Division.[7] The said LOA authorized BIR Revenue Officer Arthur Ramos and Group Supervisor Teodore Maroket, of the said RDO, to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period January 1, 2012 to December 31, 2012.[8]

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the instant *Petition for Prohibition and Injunction* on January 11, 2018.[9] The instant case was initially raffled to this Court's First Division.

Respondent filed his *Answer with Opposition (to the Petition for Prohibition and Injunction under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction)* on March 21, 2018,[10] interposing the following:

> "4. Petitioner is not entitled to the issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction.
>
> 5. First, the Honorable Court has no jurisdiction over the instant petition. Thus, it is the position of respondent that when the Honorable Court has no jurisdiction over the main action, it cannot grant provisional or ancillary remedies in relation thereto.
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> 6. As held by the Honorable Supreme Court in *BF Homes, Inc. and the Philippine Waterworks and Construction Corp. vs. Manila Electric Company*:

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[6] *Id.*
[7] Par. 6, *Petition*, vis-à-vis Par. 1, *Answer*, Docket – Vol. I, pp. 10, and 177, respectively.
[8] Par. 13, *Petition*, vis-à-vis Par. 1, *Answer*, Docket – Vol. I, pp. 14, and 177, respectively.
[9] Docket – Vol. I, pp. 8 to 67.
[10] Docket – Vol. I, pp. 177 to 190.

'Since the RTC **had no jurisdiction over the Petition** of BF Homes and PWCC in Civil Case No. 03-0151, **then it was also devoid of any authority to act on the application** of BF Homes and PWCC **for the issuance of a writ of preliminary injunction contained in the same Petition. The ancillary and provisional remedy of preliminary injunction cannot exist except only as an incident of an independent action or proceeding.**' (Emphasis supplied)

7. On one hand, Section 218 of the NIRC of 1997 provides:

'**SEC. 218. Injunction not Available to Restrain Collection of Tax.** – No court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by this Code.'

8. On the other hand, and while maintaining that the Honorable Court has no jurisdiction over the instant petition, Section 11 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) as amended by Republic Act No. 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals) provides:

'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 and 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 the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer the Court 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 ours)

9. Based on the above quoted provisions of law, although the Honorable Court has the power to suspend collection of taxes, this does not however include the exercise of respondent's power to assess or conduct audit or investigation to determine whether proper taxes have been paid. *gc*

10. The Honorable Supreme Court in the case of *Republic of the Philippines vs. Hon. Ramon Caguioa, et al* ruled:

> 'xxx it cannot be overemphasized that any injunction that restrains the collection of taxes, which is the inevitable result of the suspension of the implementation of the assailed Section 6 of R.A. No. 9334, is a limitation upon the right of the government to its lifeline and wherewithal.
>
> The power to tax emanates from necessity; without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people. **That the enforcement of tax laws and the collection of taxes are of paramount importance for the sustenance of government has been repeatedly observed. Taxes being the lifeblood of the government that should be collected without unnecessary hindrance, every precaution must be taken not to unduly suppress it.**' (Emphasis ours)

11. Applying the same to the instant case, the relief sought by petitioner is actually to restrain collection of internal revenue taxes. Hence, this case is clearly covered by the no injunction rule. To rule otherwise would defeat Sec. 218 of the NIRC of 1997.

12. Under Section 5, Rule 58 of the 1997 Revised Rules of Court, a Writ of Preliminary Injunction may be issued only if it appears from the facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the Writ of Preliminary Injunction could be heard.

13. In addition, Section 4(a) of Rule 58 of the Revised Rules of Court is clear with regard to the procedure to be followed in the issuance of writs of preliminary injunction, i.e., a preliminary injunction or temporary restraining order may be granted only when the application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded.

14. While generally the grant of a writ of preliminary injunction rests on the sound discretion of the court, extreme caution must be observed in the exercise of such discretion. The discretion of the court to grant an injunctive writ must be exercised based on the grounds and in the manner provided by law. More so in this case wherein it involves taxes, as the collection of taxes is of paramount importance to all.

15. In *Gov. Pablo P. Garcia, et al. vs. Hon. Jose P. Burgos*, the Honorable Supreme Court ruled:

'It has been consistently held that there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction. It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages.

Every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it.' (Emphasis ours)

16. To justify the injunctive relief prayed for, the petitioner must be able to establish that (1) he has a clear and unmistakable right to be protected, (2) the invasion of the right sought to be protected is material and substantial, and (3) there is an urgent and paramount necessity for the writ to prevent serious damage. Conversely, failure to establish either the existence of a clear and positive right which should be judicially protected through the writ of injunction, or of the acts or attempts to commit any act which endangers or tends to endanger the existence of said right, or of the urgent need to prevent serious damage, is a sufficient ground for denying the preliminary injunction.

17. **The grant of a writ of preliminary injunction despite the lack of a clear and unmistakable right on the part of the applicants constitutes grave abuse of discretion amounting to lack of jurisdiction.**

18. The burden of proof rests with petitioner to establish that it has a legal right that should be protected by a writ of preliminary injunction. **The issuance of the writ is therefore not proper when the complainant's right is doubtful or disputed.** Further, there must be a showing that the invasion of the right is material and substantial and that there is an urgent and paramount necessity for the writ to prevent a serious damage.

19. Considering that the petitioner has not presented any sufficient evidence to support its entitlement, petitioner is not entitled to the injunctive relief.

20. In the same case of *Republic of the Philippines vs. Hon. Ramon Caguioa, et. al*, the Honorable Supreme Court ruled:

'One such case of grave abuse obtained in this case when public respondent issued his Order of May 4, 2005 and the Writ of

Preliminary Injunction on May 11, 2005 despite the absence of a *clear and unquestionable legal right* of private respondents.

In holding that the presumption of constitutionality and validity of R.A. No. 9334 was overcome by private respondents for the reasons public respondent cited in his May 4, 2005 Order, he disregarded the fact that as a condition *sine qua non* to the issuance of a writ of preliminary injunction, private respondents needed also to show a *clear legal right* that ought to be protected. That requirement is not satisfied in this case.

To stress, the possibility of irreparable damage without proof of an actual existing right would not justify an injunctive relief.

Besides, private respondents are not altogether lacking an appropriate relief under the law. As petitioners point out in their Petition before this Court, private respondents may avail themselves of a tax refund or tax credit should R.A. No. 9334 be finally declared invalid.

Indeed, Sections 204 and 229 of the NIRC provide for the recovery of erroneously or illegally collected taxes which would be the nature of the excise taxes paid by private respondents should Section 6 of R.A. 9334 be declared unconstitutional or invalid.

It may not be amiss to add that private respondents can also opt not to import, or to import less of, those items which no longer enjoy tax exemption under R.A. No. 9334 to avoid the payment of taxes thereon.

The Court finds that public respondent had also ventured into the delicate area which courts are cautioned from taking when deciding applications for the issuance of the writ of preliminary injunction. Having ruled preliminarily against the *prima facie* validity of R.A. No. 9334, he assumed in effect the proposition that private respondents in their petition for declaratory relief were duty bound to prove, thereby shifting to petitioners the burden of proving that R.A. No. 9334 is not unconstitutional or invalid.

In the same vein, the Court finds public respondent to have overstepped his discretion when he arbitrarily fixed the injunction bond of the SBF enterprises at only ₱1million.

The alleged sparseness of the testimony of Indigo Corporation's representative on the injury to be suffered by private respondents may be excused because evidence for a preliminary injunction need not be conclusive or complete. Nonetheless, considering the number of private respondent enterprises and the volume of their businesses, the injunction bond is undoubtedly not sufficient to answer for the damages that the government was bound to suffer as a consequence of the suspension of the implementation of the assailed provisions of R.A. No. 9334.

Rule 58, Section 4(b) provides that a bond is executed in favor of the party enjoined to answer for all damages which it may sustain by reason of the injunction. The purpose of the injunction bond is to protect the defendant against loss or damage by reason of the injunction in case the court finally decides that the plaintiff was not entitled to its, and the bond is usually conditioned accordingly.

Recalling this Court's pronouncement in *Olalia v. Hizon* that:

> x x x [T]here is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction. It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages.
>
> Every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it.

it cannot be overemphasized that any injunction that restrains the collection of taxes, which is the inevitable result of the suspension of the implementation of the assailed Section 6 of R.A. No. 9334, is a limitation upon the right of the government to its lifeline and wherewithal.' (Emphasis ours)

21. In *Marcela Gonzales Almeida v. Court of Appeals*, the Honorable Supreme Court enumerated the requisites which have to be satisfied for a suspension order to issue, to state:

'x x x x

An injunctive writ may be issued when the following requisites are established:

1. The invasion of the right is material and substantial;

2. The right of complainant is clear and unmistakable;

3. There is an urgent and permanent necessity for the writ to prevent serious damage.

Thus, the petitioner, as plaintiff, was burdened to adduce testimonial and/or documentary evidence to establish her right to the injunctive writs.

x x x x' (Emphasis ours)

22. As held, it is upon the applicant or movant to adduce evidence which would tend to prove the existence of each and every one of the foregoing requisites. Here, petitioner failed to discharge its burden of proof. Undoubtedly, petitioner failed to show the existence of its clear and unmistakable right to an exemption, and consequently, to an injunctive relief upon the conduct of any investigation to determine tax liabilities.

23. It was also in *Marcela Gonzales Almeida v. Court of Appeals*, wherein the Honorable Supreme Court held that the failure of the applicant or movant to establish the second requisite results in the denial of the motion for issuance of a suspension order. When the legal right upon which the motion for the issuance of a suspension order is based is not clear, the motion must fail. In explaining the importance of satisfying the second requisite, the Honorable Supreme Court ruled:

'It must be stressed that injunction is not designed to protect contingent or future rights, and, as such, the possibility of irreparable damage without proof of actual existing right is no ground for an injunction. **A clear and positive right especially calling for judicial protection must be established.** Injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not in esse and which may never arise, or to restrain an action which did not give rise to a cause of action. There must be an existence

> of an actual right. Hence, where the plaintiff's right or title is doubtful or disputed, injunction is not proper.
>
> An injunctive remedy may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard compensation. **The possibility of irreparable damage without proof of an actual existing right would not justify injunctive relief in his favor.**
>
> x x x x' (Emphasis ours)

24. As ruled by the Honorable Supreme Court in the case of *Republic of the Philippines vs. Salvador Silerio*:

> 'Injunction is a preservative remedy aimed at protecting substantive rights and interests. The writ of preliminary injunction is issued by the court to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Its sole objective is to preserve the status quo until the merits of the case be heard fully. **The writ is issued upon satisfaction of two requisites, namely, the existence of a right to be protected and the facts against which the injunction is to be directed are violative of said right.**
>
> The question now is whether or not respondent Big Bertha Construction, plaintiff below, possessed a right entitled to protection by the courts, for **<u>the possibility of irreparable damage without proof of violation of an actually existing right is no ground for injunction</u>**.' (Emphases and underscoring supplied)

25. Therefore, the issuance of an injunction is exceptional in nature. The burden is on the movant to show a 'clear legal right,' which was defined as 'one clearly founded in or granted by law.' herein petitioner has not proved such clear right. And although it has stated that it will suffer irreparable damage, such will not prosper. As succinctly provided in the above case, it cannot be grounded on the possibility of irreparable damage without proof of an actual existing right.

26. The Honorable Court has no jurisdiction over the instant case. Section 7 of Republic Act 9282 or the Act Expanding the Jurisdiction of the Court of Tax Appeals, provides:

> 'Sec. 7. Jurisdiction. – The CTA shall exercise: *Jc*

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

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**;

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;

3. Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;

4. Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs;

5. Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals;

6. Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs which are adverse to the Government under Section 2315 of the Tariff and Customs Code;

7. Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Section 301 and 302, respectively, of the Tariff and Customs code,

> and safeguard measures under Republic Act No. 8800, where either party may appeal the decision to impose or not to impose said duties.' (Emphasis ours)

27. As alleged by petitioner, the instant petition seeks to prevent respondent from investigation petitioner and examining, inspecting, and auditing its books of accounts and any and all accounting records for taxable year 2007. Petitioner further prays for the cancellation of a subpoena duces tecum allegedly issued on 23 August 2017 and the declaration of a letter of authority as void for allegedly having no legal and factual bases.

28. In *Allied Banking Corporation v. Commissioner of Internal Revenue,* the Honorable Supreme Court made it explicit that the CTA being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.

29. In the case of *Padlan vs. Dinglasan, et al.* the Honorable Supreme Court had the occasion to rule:

> **'Basic as a hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint** which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.' (Emphasis ours)

30. Clearly, we submit that to prevent respondent from exercising its official mandate is not among those under the jurisdiction of the Honorable Court.

31. Petitioner alleged that it filed that instant petition to appeal respondent's denial of its request for the withdrawal or cancellation of a letter of authority.

32. To emphasize, the decision contemplated in the law is one rendered on a disputed assessment. Thus, it is primordial that the assessment be disputed first. In the instant case, there is even no assessment yet to begin with.

33. Such being the case, the Honorable Court has no jurisdiction over the instant petition.

34. As previously discussed, the instant petition seeks to prevent respondent from performing his official mandate and the withdrawal or cancellation of a Letter of Authority (LOA). The same are beyond the scope of judicial review.

35. Jurisprudentially, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.

36. In the decision of the Honorable Court in the case of *Special People, Inc. Foundation vs. Canada, et. al.* is instructive, viz:

> 'The issues that an administrative agency is authorized to decide should not be summarily taken away from it and submitted to a court of law without first giving the agency the opportunity to dispose of the issues upon due deliberation. **The court of law must allow the administrative agency to carry out its functions and discharge its responsibilities within the specialized areas of its competence. This rests on the theory that the administrative authority is in a better position to resolve questions addressed to its particular expertise, and that errors committed by subordinates in their resolution may be rectified by their superiors if given a chance to do so.**' (Citations omitted and Emphasis ours)

37. Finally, in the case of *Wong vs. Wong* the Honorable Supreme Court emphasized:

> 'In this jurisdiction, courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies. By reason of the special knowledge and expertise of administrative departments over matters falling within their jurisdiction, they are in a better position to pass judgment thereon and their findings of fact in that regard are generally accorded respect, if not finality, by the courts.'"

The Court set this case for hearing on August 7, 2018.[11] However, due to the filing of petitioner's *Motion for Postponement of*

[11] Resolution dated July 31, 2018, Docket – Vol. I, pp. 195 to 196.

Hearing and Setting of Commissioner's Hearings on August 6, 2018,[12] this case was set for five (5) Commissioner's Hearings, and the previously scheduled hearing was reset to October 18, 2018.[13]

On September 19, 2018, the instant case was transferred to this Court's Second Division.[14] The Court then set this case for pre-trial, and the hearing on the instant *Petition* on December 6, 2018.[15]

Petitioner filed the *Omnibus Motion for Setting of Commissioner's Hearings, Postponement of Pre-Trial Hearing, and Hearing for the Petition for Prohibition and Injunction under Rule 65 of the Revised Rules of Court with prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction* on November 7, 2018.[16] As a result, the Court cancelled the previous settings until further orders.[17]

In the meantime, *Respondent's Pre-Trial Brief* was submitted on November 12, 2018,[18] while petitioner filed its *Pre-Trial Brief* on November 28, 2018.[19]

A *Motion for the Setting of Commissioner's Hearings and Manifestation that Petitioner's Witness is Out of the Country* was filed by petitioner on November 29, 2018.[20] Respondent CIR did not file any comment thereto.[21]

For his part, respondent CIR filed a *Motion To Dismiss (to the Petition for Prohibition and Injunction under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction)* on December 4, 2018.[22] Petitioner then opposed the said *Motion To Dismiss*.[23]

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[12] Docket – Vol. I, pp. 197 to 200.
[13] Order dated August 7, 2018, Docket – Vol. I, pp. 203 to 204.
[14] Order dated September 19, 2018, Docket – Vol. I, p. 205.
[15] Order dated October 24, 2018, Docket – Vol. I, p. 222; Notice of Pre-Trial Conference dated November 23, 2018, Docket – Vol. I, pp. 234 to 235.
[16] Docket – Vol. I, pp. 223 to 226.
[17] Resolution dated December 5, 2018, Docket – Vol. I, p. 299.
[18] Docket – Vol. I, pp. 229 to 231.
[19] Docket – Vol. I, pp. 236 to 279.
[20] Docket – Vol. I, pp. 281 to 285.
[21] Records Verification dated January 18, 2019 issued by this Court's Judicial Records Division, Docket – Vol. I, p. 316.
[22] Docket – Vol. I, pp. 289 to 295.
[23] *Comment on and Opposition to Respondents' "Motion to Dismiss (to the Petition for Prohibition and Injunction under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction)"*, Docket – Vol. I, pp. 300 to 314.

In the Resolution dated April 2, 2019,[24] the Court denied respondent CIR's *Motion To Dismiss*; granted petitioner's *Omnibus Motion*; and noted *Manifestation that Petitioner's Witness is Out of the Country*.

At the hearing held on May 23, 2019,[25] the parties were required by the Court to submit their respective position papers, and thereafter, the issue in this case shall be submitted for resolution. In the same hearing, the presentation of evidence was held in abeyance.

On July 1, 2019, petitioner filed its *Memorandum/Position Paper with Motion for the Continuation of the Pre-Trial Conference and the Trial Proper for the hearing for the Initial Presentation of the Evidence of the Petitioner on the Petition for Prohibition (Main Case) Pursuant to Rule 65, Section 2 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining order and Writ of Preliminary Injunction (Ancillary Remedy of the Main Case), Pursuant to Rule 58 and Rule 65, Section 7 of the Revised Rules of Court*.[26]

Respondent also submitted his *Position Paper (to the Petition for Prohibition and Injunction under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction)* on June 13, 2019.[27]

In the Resolution dated August 20, 2019,[28] the Court partially granted *Motion for the Continuation of the Pre-Trial Conference and the Trial Proper*. In the same Resolution, the Court granted petitioner's *Motion to Suspend Collection*, thereby enjoining respondents from collecting the tax by whatever means, pursuant to the subject LOA during the pendency of the instant case. Moreover, the instant case was set for the pre-trial conference on September 12, 2019.

However, petitioner submitted its *Manifestation and Motion for Partial Reconsideration and Clarification* on September 10, 2019.[29]

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[24] Docket – Vol. I, pp. 318 to 325.
[25] Minutes of the hearing held on, and Order dated, May 23, 2019, Docket – Vol. II, pp. 704 to 705.
[26] Docket – Vol. III, pp. 728 to 796.
[27] Docket – Vol. II, pp. 711 to 725.
[28] Docket – Vol. III, pp. 1023 to 1028.
[29] Docket – Vol. III, pp. 1029 to 1051.

At the hearing held on September 12, 2019, the Court resolved that considering the manifestation of petitioner's counsels that the issue in this case is the validity of the issuance of the LOA, which is a purely legal issue, the parties were given a period of time to submit their position paper and/or memoranda. Thereafter, the validity of the issuance of the LOA shall be submitted for resolution.[30]

Subsequently, on October 7, 2019, petitioner filed a *Manifestation and Motion*.[31] Respondent opposed the same.[32]

On October 22, 2019, respondent's *Memorandum (to the Petition for Prohibition and Injunction under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction)* was filed.[33]

Petitioner submitted its *Memorandum (In Compliance with the Honorable Court's Order dated September 12, 2019)* on November 28, 2019.[34]

In the Resolution dated November 26, 2019,[35] the Court noted and denied petitioner's *Manifestation and Motion for Partial Reconsideration* (of the Court's Resolution dated August 20, 2019) and *Manifestation and Motion*.

On January 7, 2020, the instant case was submitted for decision.[36]

THE ISSUE

In the *Memorandum* filed by respondent CIR, he again raises the issue of jurisdiction, to wit:

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[30] Minutes of the hearing held on, and Order dated, September 12, 2019, Docket – Vol. III, pp. 1053 and 1054.
[31] Docket – Vol. III, pp. 1055 to 1064.
[32] *Opposition (Re: Manifestation and Motion)*, Docket – Vol. III, pp. 1091 to 1093.
[33] Docket – Vol. III, pp. 1082 to 1089.
[34] Docket – Vol. III, pp. 1115 to 1197.
[35] Resolution dated November 26, 2019, Docket – Vol. III, pp. 1105 to 1114.
[36] Resolution dated January 7, 2020, Docket – Vol. III, p. 1201.

> "WHETHER OR NOT THE HONORABLE COURT HAS JURISDICTION TO ACT ON THE INSTANT PETITION FOR PROHIBITION AND INJUNCTION UNDER RULE 65 OF THE REVISED RULES OF COURT WITH PRAYER FOR THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER AND WRIT OF PRELIMINARY INJUNCTION."[37]

However, We shall no long belabor to reiterate Our ruling in the Resolution dated April 2, 2019 that this Court has jurisdiction to entertain the present *Petition for Prohibition*.[38]

On the other hand, in its *Memorandum*, petitioner raises the following issues, considering that the issue of jurisdiction has already been settled, to wit:

> "a. Whether or not **Respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction under Rule 65, Section 2 of the Revised Rules of Court, when Respondents issued Letter of Authority (LOA) No. SN: eLA201500089752 dated November 21, 2017**, authorizing named BIR Revenue Officer, Arthur Ramos, and Group Supervisor, Teodore Maroket, of BIR RDO 126 – Regular LT Division III, to examine the books of accounts and other accounting records of Petitioner for all internal revenue taxes for the period January 1, 2012 to December 31, 2012, beyond the three (3)-year prescriptive period for Respondents to assess and collect all internal revenue taxes for the period January 1, 2012 to December 31, 2012 under Section 203 in relation to Section 222 of the National Internal Revenue Code (NIRC) of 1997, as amended, since the instant case does not fall under any of the enumerated exceptions to the three (3) year prescriptive period provided under Section 222 of the same Code; and
>
> b. Whether or not **the Honorable Court of Tax Appeals should restrain and permanently enjoin the Respondents from implementing the subject void Letter of Authority (LOA) No. SN: eLA201500089752 dated November 21, 2017 by issuing a Writ of Prohibition** pursuant to Rule 65, Section 2 of the Revised Rules of Court."[39]

Thus, We shall confine Ourselves with the resolution of the foregoing issues. To simplify, however, the said issues, and in keeping with the recognition by this Court, at the hearing held on

[37] Docket – Vol. III, pp. 1083 to 1084.
[38] Docket, pp. 318 to 325.
[39] Docket – Vol. III, pp. 1149 to 1150.

September 12, 2019,[40] that what is involved herein is a purely legal issue, We shall primarily address the following:

"WHETHER THE SUBJECT LOA IS VALID."

Petitioner's arguments:

Petitioner argues that respondents' right to assess and collect taxes from petitioner for the period January 1, 2012 to December 31, 2012 had already prescribed as of the date of the issuance of the subject LOA on November 21, 2017; that respondents' LOA SN: eLA201500089752 dated November 21, 2017 for the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period January 1, 2012 to December 31, 2012 which was issued beyond the three (3)-year prescriptive period to make a tax assessment under Section 203 of the NIRC of 1997, as amended, is null and void *ab initio*; that respondents acted with grave abuse of discretion amounting to lack or excess of jurisdiction when they issued the said LOA, knowing fully well that the three (3)-year prescriptive period to make tax assessment under the same Section 203, against petitioner for the same taxable period had already prescribed; that petitioner has a clear legal right entitled to the protection by way of an injunctive writ; that petitioner stands to suffer grave and irreparable injury if an injunctive writ is not issued; and that there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.

THE COURT'S RULING

The instant *Petition for Prohibition and Injunction under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI)* must fail.

The subject LOA is valid.

Petitioner avers that respondents' right to assess and collect taxes had already prescribed as of the date of the issuance of the subject LOA on November 21, 2017, invoking Sections 203 and 222 *ju*

[40] Minutes of the hearing held on, and Order dated, September 12, 2019, Docket – Vol. III, pp. 1053 to 1054.

of the NIRC of 1997. Relative thereto, petitioner states that it filed its correct and valid tax returns for the period January 1, 2012 to December 31, 2012, and correctly paid the corresponding taxes due thereon; that it did not file a false or fraudulent return with intent to evade tax or failed to file a return for the same period; and that it did not execute any *Waiver of the Defense of Prescription under the Statute of Limitations* pursuant to Sections 203 and 222 of the Tax Code of 1997, as amended, for the assessment and collection of all internal revenue taxes for the said period.

We disagree with petitioner.

The issuance of an LOA is not governed by the prescriptive periods under Sections 203 and 222 of the NIRC of 1997.

Sections 203 and 222 of the NIRC of 1997 reads:

> "SEC. 203. *Period of Limitation upon Assessment and Collection.* — <u>Except as provided in Section 222</u>, **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-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." *(Emphases and underscoring supplied)*
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> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> (a) **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.
>
> (b) **If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.** The period so agreed upon

> maybe extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> xxx xxx xxx." (*Emphases ours*)

A careful reading of the foregoing provisions would reveal that what is being governed therein is the issuance of a tax assessment or the filing of an action in court without an assessment for the collection of taxes, within a certain period of time. Specifically, Section 203 mandates the BIR **to assess** internal revenue taxes or **to commence a proceeding in court** for tax collection without an assessment, within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later.

On the other hand, Section 222(a) prescribes that **the assessment of tax or commencement of a proceeding in court**, in case of a false or fraudulent return with intent to evade tax, or in case of failure to file a return, should be done within a period of ten (10) years from the discovery of the falsity, fraud or omission. And as regards Section 222(b), **the assessment of tax** may be made beyond the expiration of the three (3)-year prescriptive period, so long as respondent CIR and the taxpayer agreed, in writing and before such expiration, to its assessment after such time.

In both provisions, nothing has been said about the issuance of an LOA. Thus, the issuance thereof is ***not*** subject to the periods of limitation or prescriptive periods enunciated under Sections 203 and 222 of the NIRC of 1997. To be clear, while under the said provisions, there is a prescriptive period for the issuance of tax assessments, the issuance of an LOA has none.

After all, a tax assessment is totally different from an LOA. In other words, an LOA is not akin to a tax assessment.

In the context in which it is used in the NIRC, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a due tax liability that is there definitely set and fixed.[41] It also signals the time when penalties and interests begin to accrue against the taxpayer.[42]

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[41] *Adamson, et al. vs. Court of Appeals, et al.*, G.R. Nos. 120935 and 124557, May 21, 2009.
[42] *Commissioner of Internal Revenue vs. Pascor Realty and Development Corp.*, G.R. Nos. 115253-74, January 30, 1998.

In stark contrast with a tax assessment, the LOA gives notice to the taxpayer that it is under investigation for ***possible*** deficiency tax assessment; at the same time, it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[43] The LOA commences the audit process and informs the taxpayer that it is under audit for ***possible*** deficiency tax assessment.[44]

In view of the foregoing distinction, a tax assessment is always preceded by an LOA, which entails the examination of a taxpayer's books of accounts and other accounting records; and the issuance of an LOA does not necessarily mean the subsequent issuance of a tax assessment. Parenthetically, the BIR is not mandated to make an assessment relative to every return filed with it.[45]

Moreover, a cursory examination of the NIRC of 1997, as amended, would reveal that unlike in the issuance of a tax assessment, there is indeed no prescriptive period for the issuance of an LOA. If at all, the only limitation as to the examination by the BIR of a taxpayer's books and records refers only to income taxes, subject to certain exceptions, in accordance with Section 235 of the NIRC of 1997, to wit:

> "SEC. 235. *Preservation of Books of Accounts and Other Accounting Records.* – All the books of accounts, including 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*, <u>That for income tax purposes, such examination and inspection shall be made only once in a taxable year</u>, except in the following cases:**
>
> (a) Fraud, irregularity or mistakes, as determined by the Commissioner;

[43] *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.
[44] *Commissioner of Internal Revenue vs. De La Salle University, Inc., et al.*, G.R. Nos. 196596, 198841, and 198941, November 9, 2016.
[45] *SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 175410, November 12, 2014.

> (b) The taxpayer requests reinvestigation;
>
> (c) Verification of compliance with withholding tax laws and regulations;
>
> (d) Verification of capital gains tax liabilities; and
>
> (e) In the exercise of the Commissioner's power under Section 5(B) to obtain information from other persons in which the 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.
>
> Any provision of existing general or special law to the contrary notwithstanding, the books of accounts and other pertinent records of tax-exempt organizations or grantees of tax incentives shall be subject to examination by the Bureau of Internal Revenue for purposes of ascertaining compliance with the conditions under which they have been granted tax exemptions or tax incentives, and their tax liability, if any." (*Emphases and underscoring ours*)

Thus, if there is any prohibition as regards the issuance of an LOA, it should only refer to a *subsequent* examination or examinations of a taxpayer's books of accounts and other accounting records for a certain taxable year relative to income tax, so long as it does not fall under any of the above-stated exceptions. In other words, the law does not allow an issuance of an LOA more than once in the same taxable year, for income tax purposes, unless the case falls under any of the said exceptions.

In this case, however, there is no showing that the subject LOA refers merely to the examination of petitioner's income tax liability, and that the same LOA covers a subsequent examination thereof in the same taxable year. Thus, it cannot be said that the said LOA is invalid under the above-quoted Section 235 of the NIRC of 1997. &

Moreover, since, as already stated, an LOA commences the audit process and informs the taxpayer that it is under audit for a *possible* deficiency tax assessment, it seems rational that an LOA is no longer warranted when such tax assessment would already be issued beyond the prescriptive period.

However, in this case, We cannot blindly apply the three (3)-year period under Section 203 of the NIRC of 1997 in relation to the issuance of the subject LOA. *Firstly*, there is no indication of the specific taxes that will be assessed brought about by the examination made under the subject LOA. Thus, and since internal revenue taxes has different last days prescribed by law for the filing of the corresponding tax return vis-à-vis the actual filing dates thereof, We cannot as yet determine the respective reckoning dates for the commencement of the said three (3)-year period.

Secondly, no tax return was ever presented in evidence by petitioner. Relative thereto, it is incumbent upon a taxpayer, who wants to avail of the benefits of Section 203 of the NIRC of 1997 by setting up prescription as an affirmative defense, to prove that he submitted a return. If he fails to do so, the conclusion should be that no such return was filed, in which case the Government has ten (10) years within which to make the corresponding assessments.[46] Thus, at this point, this Court cannot rule that petitioner is entitled to the benefits granted under Section 203 of the NIRC of 1997.

But even granting that it was able to file its pertinent tax returns and was able to present them here, the same is of no moment. We cannot simply rely on the allegations petitioner that it did not file a false or fraudulent return with intent to evade tax. The basic rule is that mere allegation is not evidence and is not equivalent to proof.[47] *Apropos*, the BIR should not be restrained, in the first instance, to determine whether there is fraud or falsity in the tax returns filed by taxpayers, including petitioner. This is especially true since respondent CIR, "[i]*n ascertaining the correctness of any return, ...or in determining the liability of any person for any internal revenue tax, or in collecting any such liability,"* is authorized, *inter alia*, "[t]*o examine any book, paper, record, or other data which may*

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[46] Refer to *Taligaman Lumber Co., Inc. vs. Collector of Internal Revenue*, G.R. No. L-15716, March 31, 1962.
[47] *ECE Realty and Development Inc. vs. Mandap*, G.R. No. 196182, September 1, 2014.

be relevant or material to such inquiry";[48] subject to review by this Court.[49]

In fine, We see no illegality in the issuance of the subject LOA. Such being the case, the same is valid.

Since the subject LOA is valid, the issuance thereof is not tainted with grave abuse of discretion.

Section 2, Rule 65 of the Rules of Court reads:

> "SEC. 2. *Petition for prohibition.* — **When the proceedings of any** tribunal, corporation, board, officer or **person whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction,** and there is no appeal or any other 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 commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.
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> xxx xxx xxx." *(Emphases and underscoring ours)*

The statutory rule in this jurisdiction is that the writ of prohibition is not confined exclusively to courts or tribunals to keep them within the limits of their own jurisdiction and to prevent them from encroaching upon the jurisdiction of other tribunals, **but will issue, in appropriate cases, to an officer or person whose acts are without or in excess of his authority.** Not infrequently, the writ is granted, where it is necessary for the orderly administration of justice, or to prevent the use of the strong arm of the law in an oppressive or vindictive manner, or a multiplicity of actions.[50]

In addition, the term "grave abuse of discretion" has a specific meaning. An act of a court of tribunal can only be considered as with

[48] Section 5(A), NIRC of 1997.
[49] Section 4, NIRC of 1997.
[50] *Planas vs. Gil*, G.R. No. 46440, January 18, 1939.

grave abuse of discretion when such act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a 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 and hostility.[51]

Applying the foregoing standards to the instant case vis-à-vis the finding that the subject LOA is valid, the inevitable conclusion is that there is no grave abuse of discretion here. Correspondingly, no writ of prohibition shall be issued in implementing the said LOA.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Prohibition and Injunction under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI)* is **DENIED** for lack of merit. The assailed LOA No. SN: eLA 201500089752 dated November 21, 2017 issued by the BIR is **VALID**.

The Resolution dated August 20, 2019 issued by this Court, insofar as it enjoined respondents from collecting tax by whatever means pursuant to the said LOA, is **LIFTED**, without prejudice to the availment by petitioner of the remedies provided by law against tax assessments and collection.

SO ORDERED.

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

WE CONCUR:

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[51] *Yu vs. Reyes-Carpio, et al.,* G.R. No. 189207, June 15, 2011.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice