



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated February 3, 2021 which reads as follows:*

“**G.R. No. 252816 (Golden Donuts, Inc. v. Commissioner of Internal Revenue)**. – This Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court assails the Decision<sup>2</sup> dated November 19, 2019 and the Resolution<sup>3</sup> dated June 30, 2020 of the Court of Tax Appeals (CTA) *En Banc* which affirmed the ruling of the CTA in Division denying the appeal filed by Golden Donuts, Inc. (GDI) for lack of jurisdiction.

**Facts of the Case**

On June 20, 2008, GDI received Letter of Authority No. LOA-2007-00016170 (2008 LOA)<sup>4</sup> from the Bureau of Internal Revenue (BIR), authorizing the examination of its books of accounts for the taxable year January 1, 2007 to December 31, 2007. The 2008 LOA resulted in a full-blown investigation of GDI’s books which eventually led to the issuance of a Formal Letter of Demand (FLD) for the payment of ₱1,564,426,808.08 representing its deficiency income tax, expanded withholding tax, final withholding tax, fringe benefits tax, and increments and penalties. GDI protested the FLD which resulted to the conduct of a reinvestigation thereof. After reinvestigation and verification of additional voluminous supporting documents, the BIR determined that GDI’s actual deficiency tax liabilities for taxable year 2007 was ₱4,003,081.30. GDI accepted the

<sup>1</sup> *Rollo*, pp. 11-45.

<sup>2</sup> Penned by Associate Justice Catherine T. Manahan, with the concurrence of Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Esperanza R. Fabon-Victorino, Celito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, Jean Marie A. Bacorro-Villena and Maria Rowena Modesto-San Pedro (on leave); *id.* at 52-62.

<sup>3</sup> *Id.* at 63-66.

<sup>4</sup> *Id.* at 81.

BIR's findings and executed an Agreement Form with the BIR. GDI paid the tax due as recomputed by the BIR on October 1, 2012.<sup>5</sup>

However, on May 2, 2017, GDI received from the BIR-National Investigation Division a new Letter of Authority No. LOA-211-2017-00000037 (2017 LOA)<sup>6</sup> dated April 27, 2017, authorizing the examination of the books of accounts of GDI for the taxable year 2007, which is the very same period subject of the 2008 LOA. Due to this, GDI sent several letters to the BIR requesting for the termination of the reinvestigation of its 2007 books of accounts. However, instead of granting the request for termination of the reinvestigation, the BIR issued a subpoena *duces tecum* against GDI to compel it to submit additional documents pertaining to taxable year 2007. Hence, believing that the 2017 LOA was illegally issued by the BIR, GDI filed a Petition for Review with Urgent Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction to the CTA seeking to invalidate the 2017 LOA and subpoena *duces tecum* as well as to terminate the BIR investigation.<sup>7</sup>

In its Urgent Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, GDI argued that the BIR's power to investigate and issue deficiency tax assessments against it, has prescribed. In its Opposition with Motion to Dismiss, the BIR alleged that the petition filed by GDI should be dismissed on the ground of lack of jurisdiction.

### **Ruling of the CTA Division**

On January 24, 2018, the CTA in Division rendered a Resolution dismissing the petition for review filed by GDI for lack of jurisdiction. According to the CTA in Division, the petition filed by GDI essentially questions the legality of the following: (1) the BIR's issuance of the 2017 LOA; (2) the BIR's issuance of the subpoena; and (3) the conduct of an examination of GDI's books of accounts for taxable year 2007. However, the CTA in Division noted that the above-mentioned exercise of BIR's power do not fall under any of the enumerations under Republic Act No. (R.A.) 1125 as amended by R.A. 9282 over which the CTA has jurisdiction.<sup>8</sup>

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<sup>5</sup> Id. at 53-54.

<sup>6</sup> Id. at 90.

<sup>7</sup> Id. at 54.

<sup>8</sup> CTA Case No. 9676, January 24, 2018.

The CTA in Division added that a petition for review assailing an interlocutory action of the BIR prior to the issuance of a final assessment is premature and may not be construed within the context of “other matters arising under the National Internal Revenue Code” to which the CTA has jurisdiction. The CTA in Division refused to prevent the BIR from exercising its mandate to authorize the examination of any taxpayer. It is only after the audit and examination and the issuance of the final assessment notice that the party disputing the assessment may resort to the CTA to appeal the inaction or denial by the BIR of its protest.<sup>9</sup>

GDI filed a motion for reconsideration which was denied in a Resolution dated May 10, 2018. GDI elevated the case to the CTA *En Banc*.<sup>10</sup>

### **Ruling of the CTA *En Banc***

On November 19, 2019, the CTA *En Banc* rendered its Decision<sup>11</sup> affirming the dismissal of the petition filed by GDI.

The CTA *En Banc* cited the case of *CIR v. CTA and Petron Corporation*<sup>12</sup> in saying that the phrase “other matters arising under the NIRC” as stated under R.A. 9282 providing for the jurisdiction of the CTA should be understood as pertaining to those matters directly related to the preceding phrases “disputed assessments, refund of internal revenue taxes, fees, or other charges, penalties imposed in relation thereto” and must not be taken in isolation. The CTA *En Banc* agreed with the CTA in Division that the issuance of a LOA and subpoena *duces tecum* does not fall under the matters within which the CTA may take cognizance prior to the issuance of a final assessment.<sup>13</sup>

GDI moved for reconsideration which was denied in a Resolution<sup>14</sup> dated June 30, 2020.

Undaunted, GDI filed this Petition for Review on *Certiorari*<sup>15</sup> reiterating that the CTA erred in refusing to take cognizance of the case.

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<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Supra note 2.

<sup>12</sup> 764 Phil. 195 (2015).

<sup>13</sup> *Rollo*, pp. 58-59.

<sup>14</sup> Id. at 63-66.

<sup>15</sup> Id. at 11-44.

### Issue

Whether the CTA properly refused to take cognizance of the case for lack of jurisdiction.

### Ruling of the Court

The petition is meritorious.

In the case of *City of Manila v. Grecia-Cuerdo (City of Manila)*,<sup>16</sup> this Court for the first time recognized the CTA's jurisdiction over petitions for *certiorari* under Rule 65 of the Rules of Court over interlocutory orders issued by the Regional Trial court in a local tax case. Thus:

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The foregoing notwithstanding, while there is no express grant of such power, with respect to the CTA, Section 1, Article VIII of the 1987 Constitution provides, nonetheless, that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law and that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

On the strength of the above constitutional provisions, it can be fairly interpreted that the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of *certiorari* in these cases.

Indeed, in order for any appellate court to effectively exercise its appellate jurisdiction, it must

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<sup>16</sup> 726 Phil. 9 (2014).

have the authority to issue, among others, a writ of certiorari. In transferring exclusive jurisdiction over appealed tax cases to the CTA, it can reasonably be assumed that the law intended to transfer also such power as is deemed necessary, if not indispensable, in aid of such appellate jurisdiction. There is no perceivable reason why the transfer should only be considered as partial, not total.

Consistent with the above pronouncement, this Court has held as early as the case of *J.M. Tuason & Co., Inc. v. Jaramillo, et al.* that “if a case may be appealed to a particular court or judicial tribunal or body, then said court or judicial tribunal or body has jurisdiction to issue the extraordinary writ of certiorari, in aid of its appellate jurisdiction.” This principle was affirmed in *De Jesus v. Court of Appeals*, where the Court stated that “a court may issue a writ of certiorari in aid of its appellate jurisdiction if said court has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the lower court.” The rulings in *J.M. Tuason* and *De Jesus* were reiterated in the more recent cases of *Galang, Jr. v. Geronimo and Bulilis v. Nuez*.

Furthermore, Section 6, Rule 135 of the present Rules of Court provides that when by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer.<sup>17</sup> (citations omitted)

Under Section 7 of R.A. 9282 which expanded the jurisdiction of the CTA, the latter is given exclusive appellate jurisdiction over “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.” Following the ruling of the Court in *City of Manila*, the CTA may take cognizance of a petition for *certiorari* to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction committed by the BIR in issuing the 2017 LOA against GDI as well as the subpoena *duces tecum* considering that a previous investigation of the same taxable year

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<sup>17</sup> Id. at 24-25.

2007 was already conducted pursuant to the 2008 LOA and GDI has already settled its tax liabilities arising out of said investigation.

Also, in the case of *Banco de Oro v. Republic*,<sup>18</sup> the Court ruled that:

In other words, within the judicial system, the law intends the Court of Tax Appeals to have exclusive jurisdiction to resolve all tax problems. **Petitions for writs of certiorari against the acts and omissions of the said quasi-judicial agencies should, thus, be filed before the Court of Tax Appeals.**<sup>19</sup> (Emphasis supplied)

However, in this case, instead of filing a petition for *certiorari* under Rule 65 before the CTA to question the interlocutory orders of the BIR, GDI filed a petition for review. Obviously, GDI availed of the wrong remedy. Nevertheless, in accordance with the liberal spirit pervading the Rules of Court, the interest of substantial justice and considering that the petition for review was filed within the 30-day reglementary period under Section 9 of R.A. 9282 which is within the 60-day reglementary period to file a petition for *certiorari* under Rule 65 of the Rules of Court, and because of the significance of the issue on jurisdiction, the Court deems it proper and justified to relax the rules and, thus, treat the petition for review as petition for *certiorari*.

**WHEREFORE**, this case is **REMANDED** to the Court of Tax Appeals in Division to resolve the case and determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction committed by the Bureau of Internal Revenue. The CTA is enjoined to treat the petition for review filed by petitioner Golden Donuts, Inc. as petition for *certiorari*.

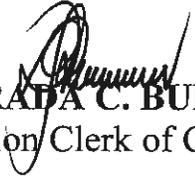
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<sup>18</sup> 793 Phil. 97 (2016).

<sup>19</sup> Id. at 124.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court <sup>2/3/21</sup>

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
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