Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

SPOUSES EMMANUEL D. PACQUIAO and JINKEE J. PACQUIAO, Petitioners,	**G.R. No. 213394**
	Present:
	CARPIO, *J., Chairperson,* BRION, MENDOZA, REYES,* and LEONEN, *JJ.*
- versus -	
THE COURT OF TAX APPEALS – FIRST DIVISION and THE COMMISSION OF INTERNAL REVENUE, Respondents.	Promulgated: APR 06 2016

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DECISION

MENDOZA, *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 65 of the Rules of Court filed by petitioner spouses, now Congressman Emmanuel D. Pacquiao *(Pacquiao)* and Vice-Governor Jinkee J. Pacquiao *(Jinkee)*, to set aside and annul the April 22, 2014 Resolution[2] and the July 11, 2014 Resolution[3] of the Court of Tax Appeals *(CTA),* First Division, in CTA Case No. 8683.

Through the assailed issuances, the CTA granted the petitioners' Urgent Motion to Lift Warrants of Distraint & Levy and Garnishment and for the Issuance of an Order to Suspend the Collection of Tax (with Prayer for the Issuance of a Temporary Restraining Order[4] *[Urgent Motion],* dated

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* Designated additional member per Raffle dated December 1, 2014.
[1] *Rollo*, pp. 3-55.
[2] Id. at 82-91.
[3] Id. at 92-100.
[4] Id. at 635-654.

October 18, 2013, but required them, as a condition, to deposit a cash bond in the amount of ₱3,298,514,894.35 or post a bond of ₱4,947,772,341.53.

The Antecedents

The genesis of the foregoing controversy began a few years before the petitioners became elected officials in their own right. Prior to their election as public officers, the petitioners relied heavily on Pacquiao's claim to fame as a world-class professional boxer. Due to his success, Pacquiao was able to amass income from both the Philippines and the United States of America *(US)*. His income from the US came primarily from the purses he received for the boxing matches he took part under Top Rank, Inc. On the other hand, his income from the Philippines consisted of talent fees received from various Philippine corporations for product endorsements, advertising commercials and television appearances.

In compliance with his duty to his home country, Pacquiao filed his 2008 income tax return on April 15, 2009 reporting his Philippine-sourced income.[5] It was subsequently amended to include his US-sourced income.[6]

The controversy began on March 25, 2010, when Pacquiao received a Letter of Authority[7] *(March LA)* from the Regional District Office No. 43 *(RDO)* of the Bureau of Internal Revenue *(BIR)* for the examination of his books of accounts and other accounting records for the period covering January 1, 2008 to December 31, 2008.

On April 15, 2010, Pacquiao filed his 2009 income tax return,[8] which although reflecting his Philippines-sourced income, failed to include his income derived from his earnings in the US.[9] He also failed to file his Value Added Tax *(VAT)* returns for the years 2008 and 2009.[10]

Finding the need to directly conduct the investigation and determine the tax liabilities of the petitioners, respondent Commissioner on Internal Revenue *(CIR)* issued another Letter of Authority, dated July 27, 2010 *(July LA)*, authorizing the BIR's National Investigation Division *(NID)* to examine the books of accounts and other accounting records of both Pacquiao and Jinkee for the last 15 years, from 1995 to 2009.[11] On September 21, 2010

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[5] Id. at 535-537.
[6] Id. at 538-541.
[7] Id. at 543.
[8] Id. at 544-546.
[9] Memorandum of Petitioners, p. 10; id. at 1418.
[10] Memorandum of Respondent CIR, p. 4; id. at 1361.
[11] Id. at 547.

and September 22, 2010, the CIR replaced the July LA by issuing to both Pacquiao[12] and Jinkee[13] separate electronic versions of the July LA pursuant to Revenue Memorandum Circular *(RMC)* No. 56-2010.[14]

Due to these developments, the petitioners, through counsel, wrote a letter[15] questioning the propriety of the CIR investigation. According to the petitioners, they were already subjected to an earlier investigation by the BIR for the years prior to 2007, and no fraud was ever found to have been committed. They added that pursuant to the March LA issued by the RDO, they were already being investigated for the year 2008.

In its letter,[16] dated December 13, 2010, the NID informed the counsel of the petitioners that the July LA issued by the CIR had effectively cancelled and superseded the March LA issued by its RDO. The same letter also stated that:

> **Although fraud had been established in the instant case as determined by the Commissioner**, your clients would still be given the opportunity to present documents as part of their procedural rights to due process with regard to the civil aspect thereof. Moreover, any tax credits and/or payments from the taxable year 2007 & prior years will be properly considered and credited in the current investigation.[17]
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> [Emphasis Supplied]

The CIR informed the petitioners that its reinvestigation of years prior to 2007 was justified because the assessment thereof was pursuant to a "fraud investigation" against the petitioners under the "Run After Tax Evaders" *(RATE)* program of the BIR.

On January 5 and 21, 2011, the petitioners submitted various income tax related documents for the years 2007-2009.[18] As for the years 1995 to 2006, the petitioners explained that they could not furnish the bureau with the books of accounts and other tax related documents as they had already

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[12] Id. at 550.
[13] Id. at 551.
[14] Dated June 28, 2010.
[15] *Rollo*, pp. 552-554.
[16] Id. at 555-556.
[17] Id. at 558.
[18] Id. at 559-561.

been disposed in accordance with Section 235 of the Tax Code.[19] They added that even if they wanted to, they could no longer find copies of the documents because during those years, their accounting records were then managed by previous counsels, who had since passed away. Finally, the petitioners pointed out that their tax liabilities for the said years had already been fully settled with then CIR Jose Mario Buñag, who after a review, found no fraud against them.[20]

On June 21, 2011, on the same day that the petitioners made their last compliance in submitting their tax-related documents, the CIR issued a *subpoena duces tecum*,[21] requiring the petitioners to submit additional income tax and VAT-related documents for the years 1995-2009.

After conducting its own investigation, the CIR made its initial assessment finding that the petitioners were unable to fully settle their tax liabilities. Thus, the CIR issued its Notice of Initial Assessment-Informal Conference *(NIC)*,[22] dated January 31, 2012, **directly addressed to the petitioners**, informing them that based on the best evidence obtainable, they were liable for deficiency **income taxes** in the amount of ₱714,061,116.30 for 2008 and ₱1,446,245,864.33 for 2009, inclusive of interests and surcharges. After being informed of this development, the counsel for the petitioners sought to have the conference reset but he never received a response.

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[19] SEC. 235. *Preservation of Books and Accounts and Other Accounting Records*. - All the books of accounts, including the 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, That for income tax purposes, such examination and inspection shall be made only once in a taxable year, except in the following cases:

(a) Fraud, irregularity or mistakes, as determined by the Commissioner; (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 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.

[20] *Rollo*, pp. 562-564.

[21] Id. at 566-572.

[22] Id. at 574-578.

Then, on February 20, 2012, the CIR issued the Preliminary Assessment Notice[23] *(PAN)*, informing the petitioners that based on *third-party information* allowed under Section 5(B)[24] and 6 of the National Internal Revenue Code *(NIRC)*,[25] they found the petitioners liable not only

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[23] Id. at 580-586.

[24] SEC. 5 - *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons* - In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

(A) x x x x

(B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members;

x x x x

[25] SEC. 6. *Power of the Commissioner to Make assessments and Prescribe additional Requirements for Tax Administration and Enforcement.* - (A) *Examination of Returns and Determination of Tax Due* - After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: Provided, however; That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

Any return, statement of declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: Provided, further, That no notice for audit or investigation of such return, statement or declaration has in the meantime been actually served upon the taxpayer.

(B) *Failure to Submit Required Returns, Statements, Reports and other Documents.* - When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.

In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be *prima facie* correct and sufficient for all legal purposes.

(C) *Authority to Conduct Inventory-taking, surveillance and to Prescribe Presumptive Gross Sales and Receipts.* - The Commissioner may, at any time during the taxable year, order inventory-taking of goods of any taxpayer as a basis for determining his internal revenue tax liabilities, or may place the business operations of any person, natural or juridical, under observation or surveillance if there is reason to believe that such person is not declaring his correct income, sales or receipts for internal revenue tax purposes.

The findings may be used as the basis for assessing the taxes for the other months or quarters of the same or different taxable years and such assessment shall be deemed *prima facie* correct.

When it is found that a person has failed to issue receipts and invoices in violation of the requirements of Sections 113 and 237 of this Code, or when there is reason to believe that the books of accounts or other records do not correctly reflect the declarations made or to be made in a return required to be filed under the provisions of this Code, the Commissioner, after taking into account the sales, receipts, income or other taxable base of other persons engaged in similar businesses under similar situations or circumstances or after considering other relevant information may prescribe a minimum amount of such gross receipts, sales and taxable base, and such amount so prescribed shall be *prima facie* correct for purposes of determining the internal revenue tax liabilities of such person.

(D) *Authority to Terminate Taxable Period.* - When it shall come to the knowledge of the Commissioner that a taxpayer is retiring from business subject to tax, or is intending to leave the Philippines or to remove his property therefrom or to hide or conceal his property, or is performing any act tending to obstruct the proceedings for the collection of the tax for the past or current quarter or year or to render the same totally or partly ineffective unless such proceedings are begun immediately, the Commissioner shall declare the tax period of such taxpayer terminated at any time and shall send the taxpayer a notice of such decision, together with a request for the immediate payment of the tax for the period so declared terminated and the tax for the preceding year or quarter, or such portion thereof as may be unpaid, and for deficiency **income taxes** in the amount of ₱714,061,116.30 for 2008 and ₱1,446,245,864.33 for 2009, but also for their non-payment of their **VAT liabilities** in the amount ₱4,104,360.01 for 2008 and ₱ 24,901,276.77 for 2009.

The petitioners filed their protest against the PAN.[26]

After denying the protest, the BIR issued its Formal Letter Demand[27] *(FLD),* dated May 2, 2012, finding the petitioners liable for deficiency income tax and VAT amounting to ₱766,899,530.62 for taxable years 2008 and ₱1,433,421,214.61 for 2009, inclusive of interests and surcharges. Again, the petitioners questioned the findings of the CIR.[28]

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said taxes shall be due and payable immediately and shall be subject to all the penalties hereafter prescribed, unless paid within the time fixed in the demand made by the Commissioner.

(E) *Authority of the Commissioner to Prescribe Real Property Values* - The Commissioner is hereby authorized to divide the Philippines into different zones or areas and shall, upon consultation with competent appraisers both from the private and public sectors, determine the fair market value of real properties located in each zone or area.

For purposes of computing any internal revenue tax, the value of the property shall be, whichever is the higher of:

(1) the fair market value as determined by the Commissioner, or

(2) the fair market value as shown in the schedule of values of the Provincial and City Assessors.

(F) *Authority of the Commissioner to inquire into Bank Deposit Accounts.* - Notwithstanding any contrary provision of Republic Act No. 1405 and other general or special laws, the Commissioner is hereby authorized to inquire into the bank deposits of:

(1) a decedent to determine his gross estate; and (2) any taxpayer who has filed an application for compromise of his tax liability under Sec. 204 (A) (2) of this Code by reason of financial incapacity to pay his tax liability.

In case a taxpayer files an application to compromise the payment of his tax liabilities on his claim that his financial position demonstrates a clear inability to pay the tax assessed, his application shall not be considered unless and until he waives in writing his privilege under Republic Act No. 1405 or under other general or special laws, and such waiver shall constitute the authority of the Commissioner to inquire into the bank deposits of the taxpayer.

(G) *Authority to Accredit and Register Tax Agents* - The Commissioner shall accredit and register, based on their professional competence, integrity and moral fitness, individuals and general professional partnerships and their representatives who prepare and file tax returns, statements, reports, protests, and other papers with or who appear before, the Bureau for taxpayers.

Within one hundred twenty (120) days from January 1, 1998, the Commissioner shall create national and regional accreditation boards, the members of which shall serve for three (3) years, and shall designate from among the senior officials of the Bureau, one (1) chairman and two (2) members for each board, subject to such rules and regulations as the Secretary of Finance shall promulgate upon the recommendation of the Commissioner.

Individuals and general professional partnerships and their representatives who are denied accreditation by the Commissioner and/or the national and regional accreditation boards may appeal such denial to the Secretary of Finance, who shall rule on the appeal within sixty (60) days from receipt of such appeal.

Failure of the Secretary of Finance to rule on the Appeal within the prescribed period shall be deemed as approval of the application for accreditation of the appellant.

(H) Authority of the Commissioner to Prescribe Additional Procedural or Documentary Requirements - The Commissioner may prescribe the manner of compliance with any documentary or procedural requirement in connection with the submission or preparation of financial statements accompanying the tax returns.

[26] *Rollo*, pp. 587-611.

[27] Id. at 489-495.

[28] Id. at 496-514.

On May 14, 2013, the BIR issued its Final Decision on Disputed Assessment *(FDDA)*,[29] addressed to *Pacquiao only*, informing him that the CIR found him liable for deficiency income tax and VAT for taxable years 2008 and 2009 which, inclusive of interests and surcharges, amounted to a total of ₱2,261,217,439.92.

Seeking to collect the total outstanding tax liabilities of the petitioners, the Accounts Receivable Monitoring Division of the BIR *(BIR-ARMD)*, issued the Preliminary Collection Letter *(PCL)*,[30] dated July 19, 2013, demanding that both Pacquiao and Jinkee pay the amount of ₱2,261,217,439.92, inclusive of interests and surcharges.

Then, on August 7, 2013, the BIR-ARMD sent *Pacquiao and Jinkee* the Final Notice Before Seizure *(FNBS)*,[31] informing the petitioners of their last opportunity to make the necessary settlement of deficiency income and VAT liabilities before the bureau would proceed against their property.

Although they no longer questioned the BIR's assessment of their **deficiency VAT liability,** the petitioners requested that they be allowed to pay the same in four (4) quarterly installments. Eventually, through a series of installments, Pacquiao and Jinkee paid a total ₱32,196,534.40 in satisfaction of their liability for deficiency VAT.[32]

Proceedings at the CTA

Aggrieved that they were being made liable for **deficiency income taxes** for the years 2008 and 2009, the petitioners sought redress and filed a petition for review[33] with the CTA.

Before the CTA, the petitioners contended that the assessment of the CIR was defective because it was predicated on its mere allegation that they were guilty of fraud.[34]

They also questioned the validity of the attempt by the CIR to collect deficiency taxes from Jinkee, arguing that she was denied due process. According to the petitioners, as all previous communications and notices from the CIR were addressed to both petitioners, the FDDA was void

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[29] Id. at 516-531.
[30] Id. at 612.
[31] Id. at 781.
[32] Id. at 20; pp. 625-628; 785-789.
[33] Id. at 443-488.
[34] Id. at 475-478.

because it was only addressed to Pacquiao. Moreover, considering that the PCL and FNBS were based on the FDDA, the same should likewise be declared void.[35]

The petitioners added that the CIR assessment, which was **not based on actual transaction documents but simply on "best possible sources**," was not sanctioned by the Tax Code. They also argue that the assessment failed to consider not only the taxes paid by Pacquiao to the US authorities for his fights, but also the deductions claimed by him for his expenses.[36]

Pending the resolution by the CTA of their appeal, the petitioners sought the suspension of the issuance of warrants of distraint and/or levy and warrants of garnishment.[37]

Meanwhile, in a letter,[38] dated October 14, 2013, the BIR-ARMD informed the petitioners that they were denying their request to defer the collection enforcement action for lack of legal basis. The same letter also informed the petitioners that despite their initial payment, the amount to be collected from both of them still amounted to ₱3,259,643,792.24, for **deficiency income tax** for taxable years 2008 and 2009, ***and*** ₱46,920,235.74 for **deficiency VAT** for the same period. A warrant of distraint and/or levy[39] against Pacquiao and Jinkee was included in the letter.

Aggrieved, the petitioners filed the subject Urgent Motion for the CTA to lift the warrants of distraint, levy and garnishments issued by the CIR against their assets and to enjoin the CIR from collecting the assessed deficiency taxes pending the resolution of their appeal. As for the cash deposit and bond requirement under Section 11 of Republic Act *(R.A.)* No. 1125, the petitioners question the necessity thereof, arguing that the CIR's assessment of their tax liabilities was highly questionable. At the same time, the petitioners manifested that they were willing to file a bond for such reasonable amount to be fixed by the tax court.

On April 22, 2014, the CTA issued the first assailed resolution granting the petitioner's Urgent Motion, ordering the CIR to desist from collecting on the deficiency tax assessments against the petitioners. In its resolution, the CTA noted that the amount sought to be collected was way beyond the petitioners' net worth, which, based on Pacquiao's Statement of Assets, Liabilities and Net Worth *(SALN)*, only amounted to ₱1,185,984,697.00. Considering that the petitioners still needed to cover the costs of their daily subsistence, the CTA opined that the collection of the

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[35] Id. at 461-462.
[36] Id. at 462-474.
[37] Id. at 782-784.
[38] Id. at 793.
[39] Id. at 792.

total amount of ₱3,298,514,894.35 from the petitioners would be highly prejudicial to their interests and should, thus, be suspended pursuant to Section 11 of R.A. No. 1125, as amended.

The CTA, however, saw no justification that the petitioners should deposit less than the disputed amount. They were, thus, required to deposit the amount of ₱3,298,514,894.35 or post a bond in the amount of ₱4,947,772,341.53.

The petitioners sought partial reconsideration of the April 22, 2014 CTA resolution, praying for the reduction of the amount of the bond required or an extension of 30 days to file the same. On July 11, 2014, the CTA issued the second assailed resolution[40] denying the petitioner's motion to reduce the required cash deposit or bond, but allowed them an extension of thirty (30) days within which to file the same.

Hence, this petition, raising the following

GROUNDS

A.

Respondent Court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in presuming the correctness of a fraud assessment without evidentiary support other than the issuance of the fraud assessments themselves, thereby violating Petitioner's constitutional right to due process.

B.

Respondent Court acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it required the Petitioners to post a bond even if the tax collection processes employed by Respondent Commissioner against Petitioners was patently in violation of law thereby blatantly breaching Petitioners' constitutional right to due process, to wit:

1. **Respondent Commissioner commenced tax collection process against Jinkee without issuing or serving an FDDA against her.**

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[40] Id. at 92-100.

2. **Respondent Commissioner failed to comply with the procedural due process requirements for summary tax collection remedies under Sections 207(A) and (B) of the Tax Code when she commenced summary collection remedies before the expiration of the period for Petitioners to pay the assessed deficiency taxes.**

3. **Respondent Commissioner failed to comply with the procedural due process requirements for summary tax collection remedies under Section 208 of the Tax Code when she failed to serve Petitioners with warrants of garnishment against their bank accounts.**

4. **The Chief of the ARMD, without any authority from Respondent Commissioner, increased the aggregate amount of deficiency income tax and VAT assessed against Petitioners from ₱2,261,217,439.92 to ₱3,298,514,894.35 after the filing of the Petition for Review with the Court of Tax Appeals.**

5. **Respondent Commissioner arbitrarily refused to admit that Petitioners had already paid the deficiency VAT assessments for the years 2008 and 2009.**

C.

Respondent Court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in requiring Petitioners to post a cash bond in the amount of ₱3,298,514,894.35 or a surety bond in the amount of ₱4,947,772,341.53, which is effectively an impossible condition given that their undisputed net worth is only ₱1,185,984,697.00.

D.

Respondent Court acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it imposed a bond requirement which will effectively prevent Petitioners from continuing the prosecution of its appeal from the arbitrary and bloated assessments issued by Respondent Commissioner. [41]

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[41] Id. at 27-29.

Arguments of the Petitioners

Contending that the CTA En Banc has no *certiorari* jurisdiction over interlocutory orders issued by its division, the petitioners come before the Court, asking it to 1] direct the CTA to dispense with the bond requirement imposed under Section 11 of R.A. No. 1125, as amended; and 2] direct the CIR to suspend the collection of the deficiency income tax and VAT for the years 2008 and 2009. The petitioners also pray that a temporary restraining order *(TRO)* be issued seeking a similar relief pending the disposition of the subject petition.

In support of their position, the petitioners assert that the CTA acted with grave abuse of discretion amounting to lack or excess of jurisdiction in requiring them to provide security required under Section 11 of R.A. No. 1125. Under the circumstances, they claim that they should not be required to make a cash deposit or post a bond to stay the collection of the questioned deficiency taxes considering that the assessment and collection efforts of the BIR was marred by both procedural and substantive errors. They are synthesized as follows:

First. The CTA erred when it required them to make a cash deposit or post a bond on the basis of the fraud assessment by the CIR. Similar to the argument they raised in their petition for review with the CTA, they insist that the fraud assessment by the CIR could not serve as basis for security because the amount assessed by the CIR was made without evidentiary basis,[42] but just grounded on the "best possible sources," without any detail.

Second. The BIR failed to accord them procedural due process when it initiated summary collection remedies even before the expiration of the period allowed for them to pay the assessed deficiency taxes.[43] They also claimed that they were not served with warrants of garnishment and that the warrants of garnishment served on their banks of account were made even before they received the FDDA and PCL.[44]

Third. The BIR only served the FDDA to Pacquiao. There was no similar notice to Jinkee. Considering such failure, the CIR effectively did not find Jinkee liable for deficiency taxes. The collection of deficiency taxes against Jinkee was improper as it violated her right to due process of law.[45] Accordingly, the petitioners question the propriety of the CIR's attempt to collect deficiency taxes from Jinkee.

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[42] Id. at 34-46.
[43] Id. at 48-50.
[44] Id. at 50-52.
[45] Id. at 47-48.

Fourth. The amount assessed by the BIR as deficiency taxes included the deficiency VAT for the years 2008 and 2009 which they had already paid, albeit in installments.

Fifth. The posting of the required security is effectively an impossible condition given that their undisputed net worth is only ₱1,185,984,697.00

Considering the issues raised, it is the position of the petitioners that the circumstances of the case warrant the application of the exception provided under Section 11 of R.A. No. 1125 as affirmed by the ruling of the Court in *Collector of Internal Revenue v. Avelino*[46] *(Avelino)* and *Collector of Internal Revenue v. Zulueta*,[47] *(Zulueta)* and that they should have been exempted from posting the required security as a prerequisite to suspend the collection of deficiency taxes from them.

On August 18, 2014, the Court resolved to grant the petitioners' prayer for the issuance of a TRO and to require the CIR to file its comment.[48]

Arguments of the CIR

For its part, the CIR asserts that the CTA was correct in insisting that the petitioners post the required cash deposit or bond as a condition to suspend the collection of deficiency taxes. According to the tax administrator, Section 11 of R.A. No. 1125, as amended, is without exception when it states that notwithstanding an appeal to the CTA, a taxpayer, in order to suspend the payment of his tax liabilities, is required to deposit the amount claimed by the CIR or to file a surety bond for not more than double the amount due.[49]

As for the Court's rulings in *Avelino* and *Zulueta* invoked by the petitioners, the CIR argues that they are inapplicable considering that in the said cases, it was ruled that *the requirement of posting a bond to suspend the collection of taxes could be dispensed with only if the methods employed by the CIR in the tax collection were clearly null and void and prejudicial to the taxpayer.*[50] The CIR points out that, in this case, the CTA itself made no finding that its collection by summary methods was void and even ruled that "the alleged illegality of the methods employed by the respondent (CIR) to effect the collection of tax [is] not at all patent or evident xxx" and could only be determined after a full-blown trial.[51] The CIR even suggests that the

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[46] 100 Phil. 327 (1956).
[47] 100 Phil. 872 (1957).
[48] *Rollo*, p. 1238.
[49] Id. at 1296-1298.
[50] Id. at 1298.
[51] Id. at 1298-1310.

Court revisit its ruling in *Avelino* and *Zulueta* as Section 11 of R.A. No. 1125, as amended, gives the CTA no discretion to allow the dispensation of the required bond as a condition to suspend the collection of taxes.

Finally, the CIR adds that whether the assessment and collection of the petitioners' tax liabilities were proper as to justify the application of *Avelino* and *Zulueta* is a question of fact which is not proper in a petition for *certiorari* under Rule 65, considering that the rule is only confined to issues of jurisdiction.[52]

The Court's Ruling

Appeal will not suspend the collection of tax; Exception

Section 11 of R.A. No. 1125, as amended by R.A. No. 9282,[53] embodies the rule that an appeal to the CTA from the decision of the CIR will not suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law. When, in the view of the CTA, the collection may jeopardize the interest of the Government and/or the taxpayer, it may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond.

The application of the exception to the rule is the crux of the subject controversy. Specifically, Section 11 provides:

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

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[52] Id. at 1313-1317.

[53] Entitled "An Act Expanding the Jurisdiction of the Court Of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections Or Republic Act No. 1125, As Amended, Otherwise Known as The Law Creating the Court of Tax Appeals, and for Other Purposes."

> 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:
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> **Provided, however, That when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer, the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.**
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>
> [Emphasis Supplied]

Essentially, the petitioners ascribe grave abuse of discretion on the part of the CTA when it issued the subject resolutions requiring them to deposit the amount of ₱3,298,514,894.35 or post a bond in the amount of ₱4,947,772,341.53 as a condition for its order enjoining the CIR from collecting the taxes from them. The petitioners anchor their contention on the premise that the assessment and collection processes employed by the CIR in exacting their tax liabilities were in patent violation of their constitutional right to due process of law. They, thus, posit that pursuant to *Avelino* and *Zulueta*, the tax court should have not only ordered the CIR to suspend the collection efforts it was pursuing in satisfaction of their tax liability, but also dispensed with the requirement of depositing a cash or filing a surety bond.

To recall, the Court in *Avelino* upheld the decision of the CTA to declare the warrants of garnishment, distraint and levy and the notice of sale of the properties of Jose Avelino null and void and ordered the CIR to desist from collecting the deficiency income taxes which were assessed for the years 1946 to 1948 through summary administrative methods. The Court therein found that the demand of the then CIR was made without authority of law because it was made five (5) years and thirty-five (35) days after the last two returns of Jose Avelino were filed – clearly beyond the three (3)-year prescriptive period provided under what was then Section 51(d) of the National Internal Revenue Code. Dismissing the contention of the CIR that the deposit of the amount claimed or the filing of a bond as required by law was a requisite before relief was granted, the Court therein concurred with the opinion of the CTA that the courts were clothed with authority to dispense with the requirement *"if the method employed by the Collector of Internal Revenue in the collection of tax is not sanctioned by law."*[54]

In *Zulueta*, the Court likewise dismissed the argument that the CTA erred in issuing the injunction without requiring the taxpayer either to deposit the amount claimed or to file a surety bond for an amount not more

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[54] *Collector of Internal Revenue v. Avelino,* supra note 46, at 335-336.

than double the tax sought to be collected. The Court cited *Collector of Internal Revenue v. Aurelio P. Reyes and the Court of Tax Appeals*[55] where it was written:

> Xxx. At first blush it might be as contended by the Solicitor General, but a careful analysis of the second paragraph of said Section 11 will lead Us to the conclusion that the requirement of the bond as a condition precedent to the issuance of a writ of injunction applies only in cases where the processes by which the collection sought to be made by means thereof are carried out in consonance with law for such cases provided *and not when said processes are obviously in violation of the law to the extreme that they have to be SUSPENDED for jeopardizing the interests of the taxpayer*.[56]
>
> [Italics included]

The Court went on to explain the reason for empowering the courts to issue such injunctive writs. It wrote:

> "Section 11 of Republic Act No. 1125 is therefore premised on the assumption that the collection by *summary proceedings* is by itself in accordance with existing laws; and then what is suspended is the act of collecting, whereas, in the case at bar what the respondent Court suspended was the *use of the method employed to verify the collection which was evidently illegal after the lapse of the three-year limitation period*. The respondent Court issued the injunction in question on the basis of its findings that the means intended to be used by petitioner in the collection of the alleged deficiency taxes were in violation of law. **It would certainly be an absurdity on the part of the Court of Tax Appeals to declare that the collection by the summary methods of distraint and levy was violative of the law, and then, on the same breath require the petitioner to deposit or file a bond as a prerequisite of the issuance of a writ of injunction.** Let us suppose, for the sake of argument, that the Court *a quo* would have required the petitioner to post the bond in question and that the taxpayer would refuse or fail to furnish said bond, would the Court *a quo* be obliged to authorize or allow the Collector of Internal Revenue to proceed with the collection from the petitioner of the taxes due by a means it previously declared to be contrary to law?"[57]
>
> [Italics included. Emphases and Underlining Supplied]

Thus, despite the amendments to the law, the Court still holds that the CTA has ample authority to issue injunctive writs to restrain the collection of tax **and to even dispense with the deposit of the amount claimed or the filing of the required bond**, whenever the **method** employed by the CIR in the collection of tax jeopardizes the interests of a taxpayer for being

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[55] 100 Phil. 822 (1957).
[56] Id. at 828.
[57] Id. at 829.

patently in violation of the law. Such authority emanates from the jurisdiction conferred to it not only by Section 11 of R.A. No. 1125, but also by Section 7 of the same law, which, as amended provides:

> Sec. 7. *Jurisdiction*. - The Court of Tax Appeals shall exercise:
>
> 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 imposed in relation thereto, or **other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;**
>
> x x x x
>
> [Emphasis Supplied]

From all the foregoing, it is clear that the authority of the courts to issue injunctive writs to restrain the collection of tax and to dispense with the deposit of the amount claimed or the filing of the required bond **is not simply confined to cases where prescription has set in.** As explained by the Court in those cases, ***whenever it is determined by the courts that the method employed by the Collector of Internal Revenue in the collection of tax is not sanctioned by law***, the **bond** requirement under Section 11 of R.A. No. 1125 **should be dispensed with**. The purpose of the rule is not only to prevent jeopardizing the interest of the taxpayer, but more importantly, to prevent the absurd situation wherein the court would declare "that the collection by the summary methods of distraint and levy was violative of law, and then, in the same breath require the petitioner to deposit or file a bond as a prerequisite for the issuance of a writ of injunction."[58]

The determination of whether the petitioners' case falls within the exception provided under Section 11, R.A No. 1125 cannot be determined at this point

Applying the foregoing precepts to the subject controversy, the Court finds no sufficient basis in the records for the Court to determine whether the dispensation of the required cash deposit or bond provided under Section 11, R.A No. 1125 is appropriate.

It should first be highlighted that in rendering the assailed resolution, the CTA, without stating the facts and law, made a determination that the illegality of the methods employed by the CIR to effect the collection of tax was not patent. To quote the CTA:

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[58] Id.

> In this case, the alleged illegality of the methods employed by respondent to effect the collection of tax **is not at all patent or evident as in the foregoing cases**. At this early stage of the proceedings, it is premature for this Court to rule on the issues of whether or not the warrants were defectively issued; or whether the service thereof was done in violation of the rules; or whether or not respondent's assessments were valid. **These matters are evidentiary in nature, the resolution of which can only be made after a full blown trial.**
>
> Apropos, the Court finds no legal basis to apply *Avelino* and *Zulueta* to the instant case and exempt petitioners from depositing a cash bond or filing a surety bond before a suspension order may be effected.[59]

Though it may be true that it would have been premature for the CTA to immediately determine whether the assessment made against the petitioners was valid or whether the warrants were properly issued and served, *still*, it behooved upon the CTA to properly determine, **at least preliminarily**, **whether the CIR**, in its assessment of the tax liability of the petitioners, and its effort of collecting the same, **complied with the law and the pertinent issuances of the BIR itself.** The CTA should have conducted a preliminary hearing and received evidence so it could have properly determined whether the requirement of providing the required security under Section 11, R.A. No. 1125 could be reduced or dispensed with *pendente lite.*

The Court cannot make a preliminary determination on whether the CIR used methods not sanctioned by law

Absent any evidence and preliminary determination by the CTA, the Court cannot make any factual finding and settle the issue of whether the petitioners should comply with the security requirement under Section 11, R.A. No. 1125. The determination of whether the methods, employed by the CIR in its assessment, jeopardized the interests of a taxpayer for being patently in violation of the law **is a question of fact that calls for the reception of evidence** which would serve as basis. In this regard, the CTA is in a better position to initiate this given its time and resources. The remand of the case to the CTA on this question is, therefore, more sensible and proper.

For the Court to make any finding of fact on this point would be premature. As stated earlier, there is no evidentiary basis. All the arguments are mere allegations from both sides. Moreover, a**ny finding by the Court would pre-empt the CTA** from properly exercising its jurisdiction and settle

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[59] *Rollo*, p. 98.

the main issues presented before it, that is, whether the petitioners were afforded due process; whether the CIR has valid basis for its assessment; and whether the petitioners should be held liable for the deficiency taxes.

Petition to be remanded to the CTA;CTA to conduct preliminary hearing

As the CTA is in a better position to make such a preliminary determination, a remand to the CTA is in order. To resolve the issue of whether the petitioners should be required to post the security bond under Section 11 of R.A. No. 1125, and, if so, in what amount, the CTA must take into account, among others, the following:

First. *Whether the requirement of a Notice of Informal Conference was complied with* – The petitioners contend that the BIR issued the PAN without first sending a NIC to petitioners. One of the first requirements of Section 3 of Revenue Regulation *(R.R.)* No. 12-99,[60] the then prevailing regulation on the due process requirement in tax audits and/or investigation,[61] is that a NIC be first accorded to the taxpayer. The use of the word "*shall*" in subsection 3.1.1 describes the mandatory nature of the service of a NIC. As with the other notices required under the regulation, the purpose of sending a NIC is but part of the "due process requirement in the issuance of a deficiency tax assessment," the absence of which renders nugatory any assessment made by the tax authorities.[62]

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[60] SECTION 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment*. —
3.1 Mode of procedures in the issuance of a deficiency tax assessment:
3.1.1 *Notice for informal conference*. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted.
x x x x

[61] While R.R. No. 12-99 was recently amended by R.R. No. 18-2013 on November 28, 2013, the same should not be deemed to have retroacted effect and cure the otherwise fatal defect committed by the CIR. R.R. No. 18-2013 is bereft of any indication that the revenue regulation shall operate retroactively

[62] *Commissioner of Internal Revenue v. Metro Superama, Inc.* 652 Phil. 172, 186 (2010).

Second. *Whether the 15-year period subject of the CIR's investigation is arbitrary and excessive*. – Section 203[63] of the Tax Code provides a 3-year limit for the assessment of internal revenue taxes. While the prescriptive period to assess deficiency taxes may be extended to 10 years in cases where there is false, fraudulent, or non-filing of a tax return – the fraud contemplated by law must be actual. It must be intentional, consisting of deception willfully and deliberately done or resorted to in order to induce another to give up some right.[64]

Third. *Whether fraud was duly established.* - In its letter, dated December 13, 2010, the NID had been conducting a fraud investigation against the petitioners under its RATE program and that it found that "fraud had been established in the instant case as determined by the Commissioner." Under Revenue Memorandum Order *(RMO)* No. 27-10, it is required that a **preliminary investigation** must first be conducted **before a LA is issued**.[65]

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[63] Section 203. *Period of Limitation Upon Assessment and Collection*. – Except as provided in Section 222, 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 (3)-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.

[64] *Transglobe International, Inc. v. Court of Appeals*, 631 Phil. 727, 739 (1999).

[65] The pertinent portion of RMO No. 27-10 reads:

II. *Policies and Procedures*

The following policies and guidelines shall be observed in the development and investigation of RATE cases, in addition to those set forth in the relevant revenue issuances:

A. x x x x

B. *Issuance of Letters of Authority in RATE cases.* -

1. In all RATE cases, a preliminary investigation must first be conducted to establish *prima facie* evidence of fraud or tax evasion. Such investigation shall include the verification and determination of the schemes employed and the extent of fraud perpetrated by the subject taxpayer;
2. In the event that, following the conduct of the required preliminary investigation, the NID / SIDs should determine that there is *prima facie* evidence of tax fraud, it shall submit the case, together with a memorandum justifying the issuance of a Letter of Authority (LA) to the Deputy Commissioner – Legal and Inspection Group (DCIR-LIG), through the Assistant Commissioner (Enforcement Service) / the concerned Regional Director, for evaluation;

   The DCIR-LIG shall then evaluate the request, and determine whether the same shall be recommended for approval by the Commissioner of Internal Revenue. If the DCIR-LIG finds a request meritorious, the docket of the case, together with the memorandum-request bearing the concurrence of the DCIR-LIG, shall be forwarded to the Commissioner, for final review and approval.
3. The DCIR-LIG shall likewise conduct the appropriate verification with the Letter of Authority Monitoring System (LAMS), to ascertain whether a LA for a taxpayer for a particular taxable year has already been issued to the concerned taxpayer.

   In the event that, following such verification, it is ascertained that no LA has been previously issued against the concerned taxpayer, a printout of the LAMS search results must be included in the docket of the case, to support the issuance of the requested LA.
4. If, however, it is disclosed that an LA was previously issued for the concerned taxpayer, and that the corresponding investigation has already been commenced or concluded, the DCIR-LIG shall include in the request for issuance of an LA a recommendation and justification for the re-assignment to, or re-opening of the investigation by, the NID/SID concerned. The Commissioner shall then decide whether the investigation shall be continued by the present investigating office, or if the investigation shall be re-assigned to/re-opened by the NID/SID concerned.

Fourth. *Whether the FLD issued against the petitioners was irregular.* – The FLD issued against the petitioners allegedly stated that the amounts therein were **"estimates based on best possible sources."** A taxpayer should be informed in writing of the law and the facts on which the assessment is made, otherwise, the assessment is void.[66] An assessment, in order to stand judicial scrutiny, must be based on facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption.[67]

To stress, the petitioners had asserted that the assessment of the CIR was not based on actual transactions but on **"estimates based on best possible sources."** This assertion has not been satisfactorily addressed by the CIR in detail. Thus, there is a need for the CTA to conduct a preliminary hearing.

Fifth. *Whether the FDDA, the PCL, the FNBS, and the Warrants of Distraint and/or Levy were validly issued.* In its hearing, the CTA must also determine if the following allegations of the petitioners have merit:

> a. The FDDA and PCL were issued against petitioner **Pacquiao only**. The Warrant of Distraint and/or Levy/Garnishment issued by the CIR, however, were made against the assets of **both petitioners;**
>
> b. The warrants of garnishment had been served on the banks of both petitioners **even before the petitioners received the FDDA and PCL;**
>
> c. The Warrant of Distraint and/or Levy/Garnishment against the petitioners was allegedly made **prior to the expiration of the period allowed for the petitioners to pay the assessed deficiency taxes;**
>
> d. The Warrant of Distraint and/or Levy/Garnishment against petitioners failed to take into consideration that the **deficiency VAT was already paid in full;** and

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5. In the event that the Commissioner should rule in favor of the re-assignment to/re-opening of the tax investigation by the NID/SID, the DCIR-LIG shall inform the RDO/LT District Office or Division concerned, thru the Regional Director/Assistant Commissioner – LTS, of the decision of the Commissioner, and require the transmittal of the docket of the case to the NID/SID, as well as the cancellation of the existing LA.

6. x x x x

7. The issuance of LAs shall cover only the taxable year(s) for which *prima facie* evidence of tax fraud, or of violations of the Tax Code, was established through the appropriate preliminary investigation, unless the investigation of prior or subsequent years is necessary in order to:

- Determine or trace continuing transactions entered into in the covered year and concluded thereafter, or those transactions concluded in the covered year that were commenced in prior years; or
- Establish that the same scheme was utilized for prior or subsequent years.

[66] *Commissioner of Internal Revenue v. Reyes*, 516 Phil. 176, 186 (2006).

[67] *Collector of Internal Revenue v. Benipayo*, 114 Phil. 135, 138 (1962).

e. **<u>Petitioners were not given a copy of the Warrants.</u>** Sections 207[68] and 208[69] of the Tax Code require the Warrant of Distraint and/or Levy/Garnishment be served upon the taxpayer.

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[68] Section 207. *Summary Remedies*. -

(A) Distraint of Personal Property. – Upon the failure of the person owing any delinquent tax or delinquent revenue to pay the same at the time required, the Commissioner or his duly authorized representative, if the amount involved is in excess of One million pesos (P1,000,000), or the Revenue District Officer, if the amount involved is One million pesos (P1,000,000) or less, shall seize and distraint any goods, chattels or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property of such persons ;in sufficient quantity to satisfy the tax, or charge, together with any increment thereto incident to delinquency, and the expenses of the distraint and the cost of the subsequent sale.

A report on the distraint shall, within ten (10) days from receipt of the warrant, be submitted by the distraining officer to the Revenue District Officer, and to the Revenue Regional Director: Provided, That the Commissioner or his duly authorized representative shall, subject to rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner, have the power to lift such order of distraint: Provided, further, That a consolidated report by the Revenue Regional Director may be required by the Commissioner as often as necessary.

(B) Levy on Real Property. – After the expiration of the time required to pay the delinquent tax or delinquent revenue as prescribed in this Section, real property may be levied upon, before simultaneously or after the distraint of personal property belonging to the delinquent. To this end, any internal revenue officer designated by the Commissioner or his duly authorized representative shall prepare a duly authenticated certificate showing the name of the taxpayer and the amounts of the tax and penalty due from him. Said certificate shall operate with the force of a legal execution throughout the Philippines.

Levy shall be affected by writing upon said certificate a description of the property upon which levy is made. At the same time, written notice of the levy shall be mailed to or served upon the Register of Deeds for the province or city where the property is located and upon the delinquent taxpayer, or if he be absent from the Philippines, to his agent or the manager of the business in respect to which the liability arose, or if there be none, to the occupant of the property in question.

In case the warrant of levy on real property is not issued before or simultaneously with the warrant of distraint on personal property, and the personal property of the taxpayer is not sufficient to satisfy his tax delinquency, the Commissioner or his duly authorized representative shall, within thirty (30) days after execution of the distraint, proceed with the levy on the taxpayer's real property.

Within ten (10) days after receipt of the warrant, a report on any levy shall be submitted by the levying officer to the Commissioner or his duly authorized representative: Provided, however, That a consolidated report by the Revenue Regional Director may be required by the Commissioner as often as necessary: Provided, further, That the Commissioner or his duly authorized representative, subject to rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner, shall have the authority to lift warrants of levy issued in accordance with the provisions hereof.

[69] Section 208. *Procedure for Distraint and Garnishment*. – The officer serving the warrant of distraint shall make or cause to be made an account of the goods, chattels, effects or other personal property distrained, a copy of which, signed by himself, shall be left either with the owner or person from whose possession such goods, chattels, or effects or other personal property were taken, or at the dwelling or place of business of such person and with someone of suitable age and discretion, to which list shall be added a statement of the sum demanded and note of the time and place of sale.

Stocks and other securities shall be distrained by serving a copy of the warrant of distraint upon the taxpayer and upon the president, manager, treasurer or other responsible officer of the corporation, company or association, which issued the said stocks or securities.

Debts and credits shall be distrained by leaving with the person owing the debts or having in his possession or under his control such credits, or with his agent, a copy of the warrant of distraint. The warrant of distraint shall be sufficient authority to the person owning the debts or having in his possession or under his control any credits belonging to the taxpayer to pay to the Commissioner the amount of such debts or credits.

Bank accounts shall be garnished by serving a warrant of garnishment upon the taxpayer and upon the president, manager, treasurer or other responsible officer of the bank. Upon receipt of the warrant of garnishment, the bank shall turn over to the Commissioner so much of the bank accounts as may be sufficient to satisfy the claim of the Government.

Additional Factors

In case the CTA finds that the petitioners should provide the necessary security under Section 11 of R.A. 1125, a recomputation of the amount thereof is in order. If there would be a need for a bond or to reduce the same, the CTA should take note that the Court, in A.M. No. 15-92-01-CTA, resolved to approve the CTA *En Banc* Resolution No. 02-2015, where the phrase "amount claimed" stated in Section 11 of R.A. No. 1125 was construed to refer to the **principal** amount of the deficiency taxes, ***excluding penalties, interests and surcharges.***

Moreover, the CTA should also consider the claim of the petitioners that they already paid a total of ₱32,196,534.40 deficiency VAT assessed against them. Despite said payment, the CIR still assessed them the total amount of ₱3,298,514,894.35, including the amount assessed as VAT deficiency, plus surcharges, penalties and interest. If so, these should also be deducted from the amount of the bond to be computed and required.

In the conduct of its preliminary hearing, the CTA must balance the scale between the inherent power of the State to tax and its right to prosecute perceived transgressors of the law, on one side; and the constitutional rights of petitioners to due process of law and the equal protection of the laws, on the other. In case of doubt, the tax court must remember that as in all tax cases, such scale should favor the taxpayer, for a citizen's right to due process and equal protection of the law is amply protected by the Bill of Rights under the Constitution.[70]

In view of all the foregoing, the April 22, 2014 and July 11, 2014 Resolutions of the CTA, in so far as it required the petitioners to deposit first a cash bond in the amount of ₱3,298,514,894.35 or post a bond of ₱4,947,772,341.53, should be further enjoined until the issues aforementioned are settled in a preliminary hearing to be conducted by it. Thereafter, it should make a determination if the posting of a bond would still be required and, if so, compute it taking into account the CTA *En Banc* Resolution, which was approved by the Court in A.M. No. 15-02-01-CTA, and the claimed payment of ₱32,196,534.40, among others.

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[70] *Commissioner of Internal Revenue v. Metro Superama, Inc.,* 352 Phil. 172, 187-188 (2010).

WHEREFORE, the petition is **PARTIALLY GRANTED**. Let a Writ of Preliminary Injunction be issued, enjoining the implementation of the April 22, 2014 and July 11, 2014 Resolutions of the Court of Tax Appeals, First Division, in CTA Case No. 8683, requiring the petitioners to first deposit a cash bond in the amount of ₱3,298,514,894.35 or post a bond of ₱4,947,772,341.53, as a condition to restrain the collection of the deficiency taxes assessed against them.

The writ shall remain in effect until the issues aforementioned are settled in a preliminary hearing to be conducted by the Court of Tax Appeals, First Division.

Accordingly, the case is hereby **REMANDED** to the Court of Tax Appeals, First Division, which is ordered to conduct a preliminary hearing to determine whether the dispensation or reduction of the required cash deposit or bond provided under Section 11, Republic Act No. 1125 is proper to restrain the collection of deficiency taxes assessed against the petitioners.

If required, the Court of Tax Appeals, First Division, shall proceed to compute the amount of the bond in accordance with the guidelines aforestated, particularly the provisions of A.M. No. 15-02-01-CTA. It should also take into account the amounts already paid by the petitioners.

After the posting of the required bond, or if the Court of Tax Appeals, First Division, determines that no bond is necessary, it shall proceed to hear and resolve the petition for review pending before it.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

BIENVENIDO L. REYES
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

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

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice