REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

SPOUSES EMMANUEL D. PACQUIAO and JINKEE J. PACQUIAO,
Respondents.

CTA EB NO. 2737
(CTA Case No. 8683)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and,*
ANGELES, *JJ.*

Promulgated:
JAN 23 2025 3:PM

x - x

DECISION

BACORRO-VILLENA, J.:

Before the Court *En Banc* is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue (**petitioner/CIR**), pursuant to Rule 43[2] of the Rules of Court, as amended[3], in accordance

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1 Filed on 30 March 2023, *rollo*, pp. 7-107, with annexes.

2 *Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals.*

3 A.M. No. 19-10-20-SC, otherwise known as the 2019 Amendments to the 1997 Rules of Civil Procedure.

with Rule 8[4], Section 4(b)[5] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks the reversal and setting aside of the Decision dated 29 September 2022[6] (**assailed Decision**) and Resolution dated 17 February 2023[7] (**assailed Resolution**) of the Court's Special Third Division in CTA Case No. 8683 entitled *Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao v. Commissioner of Internal Revenue.*

PARTIES TO THE CASE

Petitioner is the duly appointed CIR, with office address at the Bureau of Internal Revenue (**BIR**), BIR National Office Building, BIR Road, Diliman, Quezon City, where he or she may be served with summons and other processes.[8]

Respondents, on the other hand, are Spouses Emmanuel D. Pacquiao (**EDP**) and Jinkee J. Pacquiao (**JJP**) (collectively, **respondents/Spouses Pacquiao**), residing at Poblacion, Kiamba, Saranggani Province.[9] Respondent EDP is a world-renowned Filipino professional boxer whose income for the years 2008 and 2009 was sourced from both the United States (US) and the Philippines.[10] His Philippine-sourced income included talent fees for product endorsements, advertising commercials, and television appearances.[11]

FACTS OF THE CASE

Respondent EDP filed his 2008 Annual Income Tax Return[12] (**ITR**) on 15 April 2009, and subsequently filed an Amended 2008 Annual ITR[13]

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4 *Procedure in Civil Cases.*

5 **SEC. 4.** *Where to appeal; mode of appeal.* —

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(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by **petition for review as provided in Rule 43 of the Rules of Court**. The Court *en banc* shall act on the appeal. (Emphasis supplied)

6 Division Docket, Volume XIII, pp. 1034-1082, with exhibits. Penned by Associate Justice Erlinda P. Uy, (Ret.), with Associate Justice Ma. Belen M. Ringpis-Liban and Associate Justice Maria Rowena Modesto-San Pedro, concurring.

7 Id., pp. 1228-1236.

8 Paragraph 3, I. Summary of Admitted Facts, Joint Stipulation of Facts and Issues (**JSFI**), id., Volume XI, p. 5170.

9 Pars. 1 and 2, id.

10 Pars. 5 and 10, id., p. 5171.

11 Par. 11, id.

12 Exhibit "P-6", id., Volume I, pp. 239-241.

13 Exhibits "P-7" and "P-7-A", id., pp. 242-244; Exhibit "R-30", BIR Records, Folder 1, p. 108.

on 19 February 2010. He later received Letter of Authority (**LOA**) No. 2008-00049803 dated 19 March 2010 (**March LOA**) from the BIR. The March LOA authorized Revenue Officer (**RO**) Rosalina Reyes (**Reyes**) and Group Supervisor (**GS**) Antonino Ilagan (**Ilagan**) of Revenue District Office (**RDO**) No. 43A (East Pasig) to examine his books of accounts and other accounting records for the period 01 January 2008 to 31 December 2008 or the taxable year (**TY**) 2008.[14] On 15 April 2010, respondent EDP filed his 2009 Annual ITR.[15]

Subsequently, petitioner issued another LOA dated 27 July 2010[16] (**July LOA**), authorizing ROs Leonesto D. Bernal (**Bernal**), Amelita R. Aquino (**Aquino**), Ferdinand G. Malonzo (**Malonzo**) and GS Virma C. Clemente (**Clemente**) of the BIR's National Investigation Division (**NID**) to conduct the examination of the books of accounts and other accounting records, this time including both respondents, Spouses Pacquiao. The July LOA covered a fifteen (15)-year period, *i.e.*, from 1995 to 2009.[17] Electronic versions of the July LOA, dated 21 September 2010 and 22 September 2010, were separately issued to respondent EDP and respondent JJP. Petitioner informed Spouses Pacquiao that the examination was conducted pursuant to the BIR's Run After Tax Evaders (**RATE**) program.[18]

Upon investigation, petitioner issued an Initial Assessment-Informal Conference dated 31 January 2012[19], informing respondents of the BIR examiner's initial findings. Then, on 20 February 2012, petitioner issued a Preliminary Assessment Notice[20] (**PAN**), assessing respondents, Spouses Pacquiao, with deficiency income tax (**IT**) and value-added tax (**VAT**) for TYs 2008 and 2009. Respondents filed their Protest[21] to the PAN on 27 March 2012.

Upon denial of the Protest to the PAN, petitioner issued a Formal Letter of Demand[22] (**FLD**) with Details of Discrepancies dated 02 May

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14 Pars. 12 and 13, I. Summary of Admitted Facts, JSFI, id., Volume XI, p. 5172.
15 Exhibit "P-8", id., Volume I, pp. 246-248; Exhibit "R-31", BIR Records, Folder 1, p. 106.
16 Exhibit "P-18", id., p. 108; Exhibit "R-33", BIR Records, Folder 2, p. 5.
17 Id.
18 Par. 16, I. Summary of Admitted Facts, JSFI, id., Volume XI, p. 5173.
19 Exhibit "R-40", BIR Records, Folder 1, pp. 76-84.
20 Exhibit "R-42", id., Folder 2, pp. 60-63.
21 Exhibit "P-73", Division Docket, Volume XI, pp. 5325-5341; BIR Records, Folder 1, pp. 9-25.
22 Exhibit "R-19", BIR Records, Folder 2, pp. 106-112.

2012 against respondents, Spouses Pacquiao. Respondents filed their Protest[23] to the FLD on 20 July 2012.

On 14 May 2013, petitioner issued a Final Decision on Disputed Assessment[24] (**FDDA**), assessing respondent EDP with deficiency IT and VAT, broken down as follows:

Tax Type	Particulars	2008	2009	Total
IT	Under-declaration of income	₱780,410,875.08	₱1,448,610,030.42	₱2,229,020,905.50
VAT	Non-filing and payment of VAT on local income	3,847,675.06	28,349,459.36	32,197,134.42
Total		**₱784,258,550.14**	**₱1,476,959,489.78**	**₱2,261,217,439.92**[25]

Thereafter, petitioner issued a Preliminary Collection Letter (**PCL**) dated 19 July 2013[26], addressed to both respondents, and provided the following itemization of the taxes due:

TY	Tax Type	Basic	Surcharge	Surcharge	Total
2008	IT	₱339,309,076.12	₱169,654,538.06	₱271,447,260.90	₱780,410,875.08
2008	VAT	1,631,845.20	815,922.60	1,399,307.26	3,847,075.06
2009	IT	689,814,300.20	344,907,150.10	413,888,580.12	1,448,610,030.42
2009	VAT	13,139,348.98	6,569,674.89	8,640,435.89	28,349,459.36[27]
Total		**₱1,043,894,570.50**	**₱521,946,285.25**[28]	**₱695,375,584.17**	**₱2,261,217,439.92**

The PCL was followed by a Final Notice Before Seizure (**FNBS**) dated 07 August 2013.[29] The FNBS directed respondents, Spouses Pacquiao, to pay the deficiency taxes within ten (10) days from notice; otherwise, the warrants of distraint and/or levy and garnishment will be issued. Respondents decided not to contest the 2008 and 2009

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23 Exhibit "P-75", Division Docket, Volume XI, pp. 5130-5148.

24 Exhibit "P-60-1", id., Volume V, pp. 2473-2488; Exhibit "R-1", BIR Records, Folder 2, pp. 150-165.

25 However, the correct aggregate amount should be ₱2,261,218,039.92, resulting in a discrepancy of ₱600.00.

26 Exhibit "P-1", Division Docket, Volume I, p. 234.

27 However, the correct aggregate amount should be ₱28,349,459.76, resulting in a discrepancy of ₱0.40.

28 However, the correct aggregate amount should be ₱521,947,285.65, resulting in a discrepancy of ₱1,000.40.

29 Exhibit "P-10 Suspension", Division Docket, Volume I, p. 251.

deficiency VAT assessments and paid the same[30], as evidenced by the following deposit slips and payment forms:

	Date	Amount	Exhibits
First Installment	13 September 2013	₱961,768.77	"P-12-A" and "P-12-B"[31]
	13 September 2013	7,087,364.86	"P-12-C" and "P-12-D"[32]
Second Installment	23 December 2013	2,885,306.29	"P-65" and "P-66"[33]
	20 December 2013	21,262,094.50	"P-67" and "P-68"[34]
Total		**₱32,196,534.42**	

On 01 July 2013, petitioner issued a Warrant of Distraint and/or Levy[35] **(WDL)** and Warrants of Garnishment[36] **(WoGs)** against respondents, Spouses Pacquiao.

PROCEEDINGS BEFORE THE COURT IN DIVISION

Aggrieved by the FDDA's issuance, respondents filed with the Court in Division a Petition for Review[37] on 01 August 2013. The same was raffled to the First Division and docketed as CTA Case No. 8683.[38]

On 12 August 2013, the First Division issued Summons[39] ordering petitioner to file an Answer within 15 days from service. Petitioner received the said Summons on 15 August 2013.[40]

30 Par. 27, I. Summary of Admitted Facts, JSFI, id., Volume XI, p. 5174; Exhibit "P-11 Suspension", id., Volume I, pp. 252-254.
31 Id., Volume I, pp. 256-257.
32 Id., pp. 258-259.
33 Id., Volume V, pp. 2494-2496.
34 Id., pp. 2497-2499.
35 Exhibit "P-14 Suspension", id., Volume I, p. 262.
36 Exhibit "P-21", "P-22" and "P-24" to "P-42", id., Volume I, pp. 442, 444 and 454-472, respectively; Exhibits "P-43" to "P-55", id., Volume II, pp. 818-830.
37 Id., Volume I, pp. 6-171, with annexes.
38 The First Division was then composed of Presiding Justice Roman G. Del Rosario, as Chairperson, Associate Justice Erlinda P. Uy (Ret.) and Associate Justice Cielito N. Mindaro-Grulla (Ret.), as Members.
39 Division Docket, Volume I, p. 173.
40 Id.

After the First Division granted three (3) extensions of time to petitioner[41], the Answer[42] was filed on 21 October 2013. There, petitioner essentially argued that: (1) respondents' petition was filed beyond the thirty (30)-day period from their receipt of the FDDA[43]; (2) the due process requirement under Section 3[44] of Revenue Regulations (**RR**) No. 12-99[45] for the issuance of a deficiency tax assessment was validly complied with; (3) respondent JJP was given sufficient notice and accorded due process during the administrative audit or investigation; (4) an assessment based on "Best Evidence Obtainable" (**BEO**) is sanctioned by law; (5) the assessment against respondents recognized their right to protection against double taxation; and, (6) the assessment notices issued against respondents are valid and lawful.

In compliance with the Court's directive[46], on 22 October 2013, petitioner forwarded to the First Division the entire BIR Records of the present case consisting of 576 pages in one (1) folder.[47] The First Division noted the same in an Order dated 31 October 2013.[48]

Meanwhile, on 18 October 2013, respondents filed an "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)"[49] (**Urgent Motion for Suspension**), with petitioner's Comment and/or Opposition[50] filed on 23 October 2013. The First Division scheduled the hearing on the Urgent Motion for Suspension for 22 October 2013.[51]

During the 22 October 2013 hearing on the Urgent Motion for Suspension[52], respondents presented Richard S. Querido (**Querido**) as

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41 See Order dated 30 August 2013, Resolution dated 18 September 2013 and Resolution dated 18 October 2013, id., pp. 179, 191 and 198, respectively.

42 Id., pp. 267-286.

43 Exhibit "P-60-1"/Exhibit "R-1", supra at note 24.

44 SEC. 3. *Due Process Requirement in the Issuance of a Deficiency Tax Assessment.*

45 Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-Judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.

46 See Resolution dated 22 October 2013, Division Docket, Volume I, pp. 296-297.

47 See Manifestation and Compliance dated 23 October 2013, id., pp. 298-299.

48 Id., p. 333.

49 Id., pp. 199-218.

50 Id., pp. 320-330.

51 See Notice of Hearing dated 21 October 2013, id., p. 265.

52 See Minutes of the Hearing and Resolution, both dated 22 October 2013, id., pp. 288-294 and 296-297, respectively.

their witness. Querido had assisted them in preparing and filing their Annual ITRs since 2006, as well as respondent EDP's Statement of Assets and Liabilities (**SALN**) since 01 July 2010.[53]

On 05 November 2013, respondents continued the presentation of their witnesses, namely: (1) Querido, for the continuation of his redirect examination; (2) Marycrist Dapidran-Ibañez (**Dapidran-Ibañez**), then respondent EDP's personal assistant[54]; (3) Rosana P. San Vicente (**San Vicente**), then Chief of the BIR's Receivables Monitoring and Collection Division who appeared pursuant to a Subpoena *Duces Tecum*[55] issued on 31 October 2013; and, (4) RO Bernal, who appeared in lieu of Atty. Aurora V. Flor (**Atty. Flor**), then Assistant Chief of the BIR's NID likewise ordered to appear before the First Division *via* the same Subpoena *Duces Tecum* but was allegedly on official business.[56]

On 07 November 2013, respondents filed their "Formal Offer of Documentary Evidence for [Respondents]"[57] (**FOE on the Urgent Motion for Suspension**), consisting of Exhibits **"P-1"** to **"P-42"**, inclusive of sub-markings, with petitioner's Comment[58] filed on 13 November 2013.

On 14 November 2013, respondents filed a "Manifestation and Motion"[59], requesting the First Division to direct San Vicente to comply with the Subpoena *Duces Tecum* by immediately surrendering to the Court the complete original BIR records in her possession upon notice, under pain of contempt. They also sought permission to file a Reply to petitioner's Answer. In the interest of justice, the First Division granted the motion and submitted respondents' FOE on the Urgent Motion for Suspension for resolution in its Resolution dated 27 November 2013.[60]

53 See Judicial Affidavit of Richard S. Querido (**Querido**) dated 17 October 2013, Exhibit "P-16", id., pp. 219-263, with attached exhibits.
54 See Judicial Affidavit of Marycrist Dapidran-Ibañez dated 30 October 2013, Exhibit "P-23", id., pp. 446-453.
55 Id., p. 346.
56 See Minutes of the Hearing and Resolution, both dated 05 November 2013, id., pp. 347-359 and 361-363, respectively.
57 Id., pp. 376-390.
58 Id., pp. 473-475.
59 Id., pp. 477-480.
60 Id., pp. 498-499.

In the Resolution dated 03 December 2013[61], the First Division admitted all of respondents' exhibits presented in their FOE on the Urgent Motion for Suspension and scheduled the initial presentation of petitioner's counterevidence for 05 December 2013.

During the 05 December 2013 hearing for the presentation of petitioner's counter evidence, both parties jointly manifested that ongoing discussions between them could materially affect the outcome of the Urgent Motion for Suspension and requested additional time to conclude these discussions. Petitioner also committed not to execute the WDL and WoGs issued during the pendency of the discussions and agreed to submit the complete BIR records for this case on or before 09 December 2013. The First Division granted the request and rescheduled the hearing to 16 January 2014.[62]

In the Resolution dated 11 December 2013[63], the First Division noted petitioner's transmittal of the original BIR Records of this case consisting of sixty-five (65) pages in one (1) folder.

On 23 December 2013, respondents filed their Reply[64] to petitioner's Answer.

On 10 January 2014, respondents filed a "Request for Subpoena *Duces Tecum*"[65], seeking the issuance of a subpoena *duces tecum* directed to Chief RO Clemente, then GS of the BIR's NID. The subpoena would require her to bring the original BIR copies of documents to be used during her cross-examination at the hearing scheduled for 16 January 2014.

On even date, respondents also filed a "Request for Stipulation"[66], requesting petitioner or his or her duly authorized representative to agree to certain stipulations regarding documents originating from petitioner's agents to expedite the proceedings. On 21 January 2014,

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61 Id., Volume II, pp. 520-521.
62 See Minutes of the Hearing and Resolution, both dated 05 December 2013, id., pp. 523-526 and 528-529, respectively.
63 Id., p. 536.
64 Id., pp. 537-547.
65 Id., pp. 654-655.
66 Id., pp. 657-672, with attached exhibits.

petitioner filed a Comment[67] thereto, stating that he or she accepts respondents' proposed stipulations and confirms that the WoGs were served to the banks and establishments listed in the pertinent proposed stipulation.

On 13 January 2014, petitioner filed a similar "Request for Issuance of Subpoena *Ad Testificandum* and Subpoena *Duces Tecum*"[68], seeking the issuance of a subpoena *ad testificandum* and subpoena *duces tecum* directed to Maveronica C. Dela Cruz (**Dela Cruz**). Dela Cruz, a staff member of LBC-Eton Branch, assisted RO Aquino and facilitated the printing of the delivery history transaction for copies of the FDDA sent to respondents *via* LBC.

On 14 January 2014, the First Division issued the requested subpoena to Chief RO Clemente and the requested subpoenas to Dela Cruz.[69]

On 15 January 2014, respondents filed a Manifestation[70], informing the First Division of events that occurred outside the courtroom after the 05 November 2013 hearing on the Urgent Motion for Suspension. Specifically, respondents reported to the First Division the full settlement of the remaining balances for the alleged deficiency VAT assessments for 2008 and 2009 *per* FDDA[71], amounting to ₱2,885,306.29[72] and ₱21,262,094.50[73], respectively. Respondents further stated that, as of that date, they had fully settled the deficiency VAT assessments, inclusive of increments, issued against them by petitioner for 2008 and 2009, aggregating ₱32,196,534.40, which they no longer contest in their petition.

On 21 January 2014, petitioner filed a Counter-Manifestation[74], stating that the interest computed in the FDDA only covered the period up to 15 April 2012, resulting in the aggregate amount of ₱32,196,534.40 for 2008 and 2009. However, petitioner emphasized that because

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67 Id., pp. 724-725.
68 Id., pp. 675-677.
69 See Subpoena *Duces Tecum* and Subpoena *Duces Tecum & Ad Testificandum*, both dated 14 January 2014, id., pp. 679 and 680, respectively.
70 Id., pp. 682-698, with annexes.
71 Exhibit "P-60-1"/Exhibit "R-1", supra at note 24.
72 Exhibits "P-65" and "P-66", supra at note 33.
73 Exhibits "P-67" and "P-68", supra at note 34.
74 Division Docket, Volume II, pp. 789-795, with annexes.

respondents opted to settle their deficiency VAT in installments, deficiency penalties continued to accrue by operation of law. Petitioner further noted that the BIR's Accounts Receivable Monitoring Division (**ARMD**) had provided respondents with a computation of their total deficiency VAT as of 14 October 2013. Despite confirming that respondents made payments, petitioner manifested that, as reflected in the Integrated Tax System, these payments were not applied to VAT but were instead allocated to Miscellaneous Tax.

During the 16 January 2014 hearing for the presentation of his or her counter-evidence[75], petitioner presented his or her witnesses, namely: (1) Chief RO Clemente, then the team supervisor who personally furnished a copy of the FDDA[76] issued against respondents at respondent EDP's congressional office[77]; (2) RO Aquino, who caused the service of the FDDA *via* LBC to respondents' registered addresses[78]; (3) Dela Cruz, the LBC staff who attended and testified by virtue of a Subpoena *Duces Tecum* and *Ad Testificandum*[79] issued by the First Division on 14 January 2014; and, (4) RO Cynthia M. Catolico (**Catolico**), then assigned at the BIR's ARMD and part of the group that served the PCL[80] to respondent EDP's congressional office.[81]

Petitioner also manifested that he or she will present two (2) additional witnesses: RO Ma. Lourdes Sante (**Sante**) and Intelligence Officer (**IO**) Malonzo, both employees of the BIR. Upon agreement of the parties, the First Division scheduled the continuation of the presentation of petitioner's evidence for 28 January 2014 and granted respondents until the same date to produce and present their proposed witness to identify the document denominated as Letter dated 31 January 2012 from the law office of Romulo Mabanta Buenaventura Sayoc & De Los Angeles addressed to the BIR. This was in light of petitioner's rejection of respondents' proposal for stipulation.[82]

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75 See Minutes of the Hearing and Resolution, both dated 16 January 2014, id., pp. 699-714 and 716-718, respectively.
76 Exhibit "P-60-1"/Exhibit "R-1", supra at note 24.
77 See Amended Judicial Affidavit of Chief Revenue Officer Virma C. Clemente dated 10 January 2014, Exhibit "R-10", Division Docket, Volume II, pp. 551-613, with attached exhibits.
78 See Judicial Affidavit of Revenue Officer Amelita R. Aquino dated 10 January 2014, Exhibit "R-11", id., pp. 620-644.
79 Supra at note 69.
80 Exhibit "P-1", supra at note 26.
81 See Judicial Affidavit of Revenue Officer Cyntbia M. Catolico dated 10 January 2014, Exhibit "R-12", Division Docket, Volume II, pp. 648-653, with attached exhibit.
82 See Minutes of the Hearing and Resolution, both dated 16 January 2014, supra at note 75.

Accordingly, on 17 January 2014, respondents filed a "Request for Subpoena *Duces Tecum* and *Ad Testificandum*"[83], seeking the issuance of a subpoena *duces tecum* and *ad testificandum* directed to RO Bernal who is from the BIR's NID. The subpoena would require him to appear and testify on 28 January 2014. The First Division issued the requested subpoena to RO Bernal on 20 January 2014.[84]

On 28 January 2014, petitioner continued presenting witnesses IO Malonzo[85] and RO Sante[86], both of whom were part of the group that personally served the FDDA[87] at respondent EDP's congressional office. At the same hearing, respondents also presented RO Bernal as a hostile witness.[88]

Meanwhile, on 28 January 2014, petitioner filed a "Motion to Quash (Re: Subpoena *Duces Tecum* and *Ad Testificandum* dated 20 January 2014)"[89] (**Motion to Quash**), seeking to quash and set aside the subpoena *duces tecum* and *ad testificandum* issued to RO Bernal. Respondents filed an "Opposition to [Petitioner's] Motion to Quash"[90] (**Opposition**) on 03 February 2014. However, since RO Bernal's testimony completed and concluded during the 28 January 2014 hearing, the First Division later deemed both petitioner's Motion to Quash and respondents' Opposition moot and academic.[91]

As *per* the First Division's directive, on 03 February 2014, respondents filed their "Supplemental Formal Offer of Documentary Evidence for [Respondents]"[92] (**Supplemental FOE on the Urgent Motion for Suspension**), consisting of Exhibits "**P-43**" to "**P-61-A**", inclusive of sub-markings, with petitioner's Comment[93] thereto filed on 11 February 2014. Petitioner, on the other hand, filed his or her own FOE[94] on the Urgent Motion for Suspension, consisting of Exhibits

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83 Division Docket, Volume II, pp. 719-721.
84 See Subpoena *Duces Tecum & Ad Testificandum* dated 20 January 2014, id., p. 723.
85 See Judicial Affidavit of Intelligence Officer Ferdinand G. Malonzo dated 23 January 2014, Exhibit "R-17", id., pp. 733-756, with attached exhibits.
86 See Judicial Affidavit of Revenue Officer Ma. Lourdes Sante dated 23 January 2014, Exhibit "R-18", id., pp. 761-788, with attached exhibits.
87 Exhibit "P-60-1"/Exhibit "R-1", supra at note 24.
88 See Minutes of the Hearing dated 28 January 2014, Division Docket, Volume II, pp. 797-799.
89 Id., pp. 859-864.
90 Id., pp. 835-846.
91 See Resolution dated 14 February 2014, id., pp. 892-893.
92 Id., pp. 810-834, with attached exhibits.
93 Id., pp. 888-890.
94 Id., pp. 847-857.

"**R-1**" to "**R-18-1**", inclusive of sub-markings, with respondents' Comment/Opposition[95] thereto filed on 10 February 2014.

In the Resolution dated 05 February 2014[96], the First Division granted the parties a period of five (5) days within which to file their respective memoranda addressing the following issues: (1) whether the FDDA has become final and unappealable; (2) assuming the FDDA has become final and unappealable, whether the Court has jurisdiction to still pass upon the FDDA, considering that the WDLs and WoGs have actually been issued in light of the doctrine laid down in *Philippine Journalists, Inc. v. Commissioner of Internal Revenue*[97]; (3) whether the Court is vested with jurisdiction to pass upon the WDLs and WoGs despite the afore-cited doctrine and the reliefs sought in the main petition; (4) assuming that the suspension of collection is justified, whether the Court may direct respondents to deposit less than the amount in dispute, taking into account the doctrine laid down in *The Collector of Internal Revenue v. Jose C. Zulueta and the Court of Tax Appeals*[98]; and, (5) whether respondents' interests would be prejudiced if collection pending appeal is allowed.

Accordingly, respondents filed their *Memorandum*[99] on 12 March 2014. Petitioner, on the other hand, filed his or her *Memorandum*[100] on 20 March 2014, after being granted an extension of time by the First Division.[101]

Earlier, in the Resolution dated 27 February 2014[102], the First Division admitted respondents' additional exhibits and petitioner's exhibits related to the Urgent Motion for Suspension.

In a Resolution dated 22 April 2014[103], the Court in Division granted respondents' Urgent Motion for Suspension, noting that the amount sought to be collected by the BIR was way beyond respondents' net worth. The suspension of the collection of taxes, however, was

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95 Id., pp. 870-883.
96 Id., pp. 868-869.
97 G.R. No. 162852, 16 December 2004.
98 G.R. No. L-8840, 08 February 1957.
99 Division Docket, Volume II, pp. 899-991, with annexes.
100 Id., Volume III, pp. 1034-1066.
101 See Order dated 18 March 2014, id., Volume II, p. 996.
102 Id., pp. 895-896.
103 Id., Volume III, pp. 1073-1082.

conditioned upon the deposit of a cash bond amounting to ₱3,298,514,894.35 or posting of a surety bond equivalent to 1½ of the amount being collected, *i.e.*, ₱4,947,772,341.53. Respondents moved for partial reconsideration with respect to the bond[104], but the First Division denied the same in a Resolution dated 11 July 2014.[105]

On 23 May 2014, respondents filed a "Motion for Leave to Amend Petition for Review dated July 25, 2013"[106] (**Motion to Amend**), with attached Amended Petition for Review[107], which included allegations and arguments against the validity of the assessments. In this regard, respondents likewise filed a "Motion for Postponement of Pre-Trial Conference"[108], requesting the First Division to cancel the pre-trial conference earlier set on 06 June 2013 to afford petitioner ample time to file a comment on their Motion to Amend and file an Amended Answer. The First Division granted this request in the Resolution dated 27 May 2014.[109]

On 01 July 2014, petitioner filed a Comment/Opposition[110], requesting the First Division to deny respondents' Motion to Amend for lack of merit. Subsequently, respondents filed a "Motion for Leave to File Reply"[111] on 11 July 2014, asserting that the said Comment/ Opposition contained erroneous and misleading allegations and arguments. On 17 July 2014, respondents submitted their Reply.[112] The First Division admitted respondents' Reply and submitted the Motion to Amend for resolution.[113]

In the Resolution dated 22 August 2014[114], the First Division granted respondents' Motion to Amend, admitted the Amended Petition for Review and directed petitioner to file an Amended Answer with 10 days from notice. Petitioner filed a Motion for Reconsideration[115] (**MR on the 22 August 2014 Resolution**) thereto on 22 September 2014.

104 Id., pp. 1159-1213, with annexes.
105 Id., pp. 1462-1470.
106 Id., pp. 1226-1228.
107 Id., pp. 1229-1402.
108 Id., pp. 1223-1225.
109 Id., p. 1404.
110 Id., pp. 1449-1460, with Motion for Leave to Admit Attached Comment.
111 Id., pp. 1471-1473.
112 Id., pp. 1474-1482.
113 See Resolution dated 22 July 2014, id., p. 1486.
114 Id., Volume IV, pp. 1594-1600.
115 Id., pp. 1604-1608.

Petitioner likewise filed on 02 October 2014 a "Motion to Set Hearing (Re: [MR on the 22 August 2014 Resolution])"[116], which the First Division denied for lack of merit.[117] Similarly, in the Resolution dated 24 October 2014[118], the First Division denied petitioner's MR on the 22 August 2014 Resolution for lack of merit. It granted petitioner a fresh period of 10 days from notice to file an Amended Answer to the Amended Petition for Review[119] and scheduled the Pre-Trial Conference for 04 December 2014.

Meanwhile, on 04 August 2014, Spouses Pacquiao filed before the Supreme Court a "Petition for *Certiorari* (With Urgent Application for the Issuance of a Status *Quo Ante* Order/Temporary Restraining Order [**TRO**] and/or Writ of Preliminary Injunction [**WPI**])" dated 24 July 2014[120] (**First Petition for *Certiorari***), assailing the First Division's Resolutions dated 22 April 2014[121] and 11 July 2014[122] (**2014 Resolutions re: Suspension of Collection of Taxes**). This was docketed as **G.R. No. 213394**.

On 13 November 2014, petitioner filed an "Omnibus Motion (for Early Resolution on the Issue of Jurisdiction of this Honorable Court and to Suspend the Period to File an Answer to the Amended Petition for Review)"[123] (**First Omnibus Motion**). In the motion, petitioner contended that the Court lacked jurisdiction over respondents' petition because the FDDA[124] had already become final, executory and demandable. Petitioner also requested an additional 10 days to file an Answer to the Amended Petition for Review. On 09 December 2014, respondents filed their Comment/Opposition[125] to the First Omnibus Motion.

In the Resolution dated 27 January 2015[126] (**2015 Resolution re: Jurisdiction**), the First Division partially granted petitioner's First Omnibus Motion. It denied petitioner's prayer to dismiss respondents'

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116 Id., pp. 1623-1625.
117 See Resolution dated 15 October 2014, id., pp. 1643-1644.
118 Id., pp. 1646-1649.
119 Supra at note 107.
120 Division Docket, Volume IV, pp. 1489-1584, with annexes.
121 Supra at note 103.
122 Supra at note 105.
123 Division Docket, Volume IV, pp. 1671-1682.
124 Exhibit "P-60-1"/Exhibit "R-1", supra at note 24.
125 Division Docket, Volume IV, pp. 1702-1709.
126 Id., pp. 1748-1765.

petition for lack of merit but granted petitioner a fresh period of 10 days to file an Amended Answer to the Amended Petition for Review[127], if desired. Otherwise, the Answer[128] filed on 21 October 2013, would stand as the Answer to the Amended Petition for Review.

On 12 February 2015, petitioner filed an MR[129] on the 2015 Resolution re: Jurisdiction, with respondents' Comment/Opposition[130] thereto filed on 02 March 2015. Petitioner requested that the said Resolution be reconsidered and set aside, arguing that the Petition for Review should be dismissed for being time-barred and/or for lack of jurisdiction. Petitioner likewise filed a Reply[131] on 16 March 2015, pursuant to the First Division's directive during the 20 February 2015 hearing on the said MR.[132]

On 10 April 2015, petitioner filed an "Omnibus Motion (For Leave to Present Evidence and to Defer Resolution of the Case"[133] (**Second Omnibus Motion**), requesting the First Division to defer the resolution of his or her MR on the 2015 Resolution re: Jurisdiction. Petitioner sought to present a witness to establish the relevance of respondents' receipt of the PAN and the FLD, particularly in light of respondents' admission in their Reply that they do not deny having received these BIR issuances. Respondents filed their Comment/Opposition[134] thereto on 27 April 2015.

In the Resolution dated 28 May 2015[135], the First Division granted petitioner's Second Omnibus Motion and scheduled the presentation of petitioner's additional witness for 09 June 2015. However, the hearing was later reset to 08 September 2015 due to the unavailability of petitioner's witness.[136]

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127 Supra at note 107.
128 Supra at note 42.
129 Division Docket, Volume IV, pp. 1786-1796, with Manifestation.
130 Id., pp. 1801-1814.
131 Id., pp. 1830-1840, with Motion for Leave to Admit Attached Reply.
132 See Minutes of the Hearing and Resolution, both dated 20 February 2015, id., pp. 1782-1783 and 1785, respectively.
133 Id., pp. 1847-1850.
134 Id., pp. 1870-1878.
135 Id., pp. 1880-1882.
136 See Minutes of the Hearing and Resolution, both dated 09 June 2015, id., pp. 1883-1884 and 1886-1887, respectively.

On 04 September 2015, petitioner filed a "Request for Issuance of Subpoena *Ad Testificandum* and Subpoena *Duces Tecum*"[137], seeking the issuance of a subpoena *ad testificandum* and subpoena *duces tecum* directed to Feliciano Pacheco (**Pacheco**), a Records Staff at the Records Division of the House of Representatives. Pacheco's testimony was intended to corroborate the testimony of RO Aquino, who would be presented to prove that a certain Erwin Jamora (**Jamora**) was authorized to receive mail matters for respondents. The First Division issued the requested subpoena to Pacheco on 07 September 2015.[138]

On 08 September 2015, petitioner presented RO Aquino[139], who testified that she mailed the BIR's assessment notices, particularly the PAN, the FLD and the FDDA, to respondents Spouses Pacquiao. She further attested that copies of the FLD were duly served to them through Jamora whose name appears on the Registry Return Card[140] of the FLD. However, a Certification from the Post Office[141] indicates that it was Pacheco who received the FLD on 28 June 2012.[142]

G.R. NO. 213394: SPOUSES EMMANUEL D. PACQUIAO AND JINKEE J. PACQUIAO V. THE COURT OF TAX APPEALS FIRST DIVISION AND THE COMMISSIONER OF INTERNAL REVENUE

In the First Petition for *Certiorari* before the Supreme Court, respondents, Spouses Pacquiao, argued that given the procedural and substantive lapses in the BIR's tax assessment and collection efforts, they should have been exempt from the posting of bond as a prerequisite to suspend the collection of deficiency taxes.

In the Resolution dated 18 August 2014[143], the Supreme Court noted respondents' First Petition for *Certiorari*, directed petitioner to

137 Id., pp. 1891-1893.

138 See Order and Subpoena *Duces Tecum & Ad Testificandum*, both dated 07 September 2015, id., pp. 1916 and 1907, respectively.

139 See Judicial Affidavit of Revenue Officer Amelita R. Aquino dated 04 September 2015, Exhibit "R-22", id., pp. 1899-1906, with attached exhibits.

140 Exhibit "R-20", id., p. 1905.

141 Exhibit "R-21", id., p. 1906.

142 See Minutes of the Hearing and Resolution, both dated 08 September 2015, id., pp. 1917-1922 and 1925-1927, respectively.

143 See Notice dated 18 August 2014 (G.R. No. 213394), id., p. 1590.

file a comment, and issued a TRO[144] against the First Division's 2014 Resolutions re: Suspension of Collection of Taxes in CTA Case No. 8683. The High Court thereby enjoined the First Division to: (1) refrain from implementing the assailed resolutions that required respondents to either deposit a cash bond of ₱3,298,514,894.35 or post a surety bond of ₱4,947,772,341.53 as a condition for suspending the collection of deficiency IT and VAT for TYs 2008 and 2009; and, (2) proceed with CTA Case No. 8683 with deliberate dispatch. The Supreme Court also enjoined petitioner or any duly authorized representative from issuing, executing, enforcing, implementing, or otherwise giving effect to any WDL, WoG, or Notice of Tax Lien. Furthermore, it prohibited attempts to collect any taxes based on the deficiency IT and VAT assessments for TYs 2008 and 2009, including any increments thereon, or performing any related actions.

In compliance with the Supreme Court's directive, petitioner filed a Comment[145] on respondents' First Petition for *Certiorari*. Subsequently, in the Resolution dated 21 January 2015[146], the Supreme Court denied petitioner's MR of the 18 August 2014 Resolution, for which it had issued a TRO against the CTA First Division's 2014 Resolutions re: Suspension of Collection of Taxes. The same Resolution required respondents to file a Reply to petitioner's Comment on their First Petition for *Certiorari*.

Earlier, on 15 August 2014, respondents filed an "Urgent Motion for Time to Deposit or Post Bond"[147], requesting the CTA First Division to suspend the 30-day period granted to them for compliance with the bond requirement. They argued that such suspension was necessary to avoid rendering moot the exact issue elevated to, and then under consideration by, the Supreme Court in G.R. No. 213394. However, considering the Supreme Court's 18 August 2014 Resolution, the CTA First Division rendered the said motion moot and academic.[148]

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144 Id., pp. 1591-1592.
145 Id., pp. 1710-1741; Received by the CTA's First Division on 18 December 2014.
146 Id., pp. 1817-1818.
147 Id., pp. 1586-1589.
148 See Resolution dated 29 August 2014, id., pp. 1602-1603.

On 08 September 2014, petitioner filed an MR[149] on the Supreme Court's 18 August 2014 Resolution, with respondents Comment/ Opposition[150] thereto filed on 08 October 2014.

In the Resolution dated 15 June 2015[151], the Supreme Court granted respondents' motion for extension of time to file a reply to petitioner's Comment on respondents' First Petition for *Certiorari*, noted respondents' Reply dated 25 March 2015[152], and required the parties to submit their respective memoranda with 30 days from notice.

In compliance with the Supreme Court's above directive for the parties to submit their respective memoranda, petitioner filed his or her Memorandum[153] on 02 September 2015. On the other hand, respondents filed their Memorandum[154] on 07 October 2015. The Supreme Court granted respondents' earlier three (3) motions for extension of time to file a memorandum and noted the parties' separate memoranda in the Resolution dated 25 November 2015.[155]

On 06 April 2016, the Supreme Court's Second Division promulgated a Decision[156] on respondents' First Petition for *Certiorari*, the dispositive portion of which reads:

> ...
>
> **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 [respondents] 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.

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149 Id., pp. 1610-1618.
150 Id., pp. 1627-1632.
151 See Notice dated 15 June 2015 (G.R. No. 213394), id., pp. 1888-1889.
152 Id., pp. 1852-1866.
153 Id., pp. 1940-1974.
154 Id., Volume V, pp. 1978-2083, with annexes.
155 See Notice dated 25 November 2015, id., pp. 2110-2111.
156 See *Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao v. The Court of Tax Appeals – First Division and The Commissioner of Internal Revenue*, G.R. No. 213394, 06 April 2016, id., pp. 2130-2154.

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 [respondents].

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 [respondents].

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.

...

The Supreme Court held that when it is determined that the method employed in the collection of tax is not sanctioned by law, the bond requirement under Section 11 of Republic Act (**RA**) No. 1125, as amended, must be dispensed with. This approach is necessary not only to safeguard the taxpayer's interests but, more importantly, to avoid "the absurd situation wherein the court would declare 'that the collection by the summary methods of distraint and levy was violative of law, and then, in the same breath require the [taxpayer] to deposit or file a bond as a prerequisite for the issuance of a writ of injunction'".[157] Thus, the case was remanded to the CTA for determination of the following, among others:

...

First. *Whether the requirement of a Notice of Informal Conference was complied with* - The [respondents] contend that the BIR issued the PAN without first sending a NIC to [respondents]. One of the first requirements of Section 3 of Revenue Regulation (*R.R.*) No. 12-99, the then prevailing regulation on the due process requirement in tax audits and/or investigation, 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

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157 Id.; Citation omitted.

assessment," the absence of which renders nugatory any assessment made by the tax authorities.

Second. *Whether the 15-year period subject of the CIR's investigation is arbitrary and excessive* - Section 203 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.

Third. *Whether fraud was duly established.* - In its letter, dated December 13, 2010, the NID had been conducting a fraud investigation against the [respondents] 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**.

Fourth. *Whether the FLD issued against the petitioners was irregular.* - The FLD issued against the [respondents] 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. 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.

To stress, the [respondents] 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 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 [respondents] 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.[158]
>
> ...

The Supreme Court ordered the issuance of a WPI to enjoin the implementation of the CTA First Division's 2014 Resolutions re: Suspension of Collection of Taxes. Additionally, the case was remanded to the CTA First Division for the conduct of a preliminary hearing to determine whether the dispensation or reduction of the required cash deposit or bond provided under Section 11 of RA 1125, as amended, is proper to restrain the collection of deficiency taxes assessed against respondents, Spouses Pacquiao. The WPI[159] was issued on the same date as the promulgation of the said Decision.

To recap, the Supreme Court directed a preliminary hearing for the determination of the following matters: (1) whether the requirement of a Notice of Informal Conference (**NIC**) was complied with; (2) whether the 15-year period subject of petitioner's investigation is arbitrary and excessive; (3) whether fraud was duly established; (4) whether the FLD issued against respondents was irregular; and, (5) whether the FDDA, the PCL, the FNBS and the WDLs were validly issued.

On 29 July 2016, petitioner filed a "Manifestation with Urgent Motion for Clarification"[160] (**Manifestation**) before the Supreme Court's Second Division, requesting the Court to clarify the following: (1) whether the preliminary hearing on the determination of the bond should take precedence despite the jurisdictional issue of the CTA currently being heard; (2) whether the burden of proof would shift to petitioner in a proceeding where respondents, as movants, are seeking the injunctive order; and, (3) whether its directive for the CTA to determine the validity of the FDDA is applicable at this stage, given that the hearing pertains only to the preliminary injunctive relief being sought by respondents.

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158 Citations omitted, emphasis and italics in the original text.

159 Division Docket, Volume V, pp. 2127-2128.

160 Id., pp. 2296-2302.

In a Resolution dated 07 December 2016[161], the Supreme Court noted petitioner's Manifestation and issued the following clarifications: (1) the determination of which issue should be resolved first is a matter that should be addressed to the CTA's sound discretion; (2) the burden of proof refers to the obligation of a party to present evidence on the facts in issue necessary to establish their claim or defense by the amount of evidence required by law; and, (3) any determination of the validity of the FDDA, the PCL, the FNBS and the WDL is only preliminary and merely for the purpose of resolving the issue presented by respondents in their urgent motion, *i.e.*, whether a reduction or dispensation of bond is merited under the circumstances.

REMAND TO THE FIRST DIVISION; PRELIMINARY HEARING ON THE ISSUE OF WHETHER RESPONDENTS, SPOUSES PACQUIAO, SHOULD BE REQUIRED TO POST THE BOND

During the 28 April 2016 hearing[162], the scheduled testimony of petitioner's witness did not proceed. Instead of presenting Pacheco, petitioner's counsel presented Arnel C. Bato (**Bato**) without first filing a Motion for Substitution of Witness. Similarly, respondents' counsel raised the issue of lifting the Notice of Lien, despite not having filed a prior Motion to Lift Notice of Lien. Consequently, the First Division directed both petitioner's and respondents' counsels to file the corresponding motions. Furthermore, in light of the Supreme Court's 06 April 2016 Decision, the First Division instructed both parties to submit their respective manifestations detailing how they intend to present their evidence to comply with the Supreme Court's directive.

Accordingly, on 04 May 2016, petitioner filed a "Motion to Substitute Witness"[163], requesting permission to substitute Pacheco with Bato as the witness. Respondent's Comment/Opposition[164] was subsequently filed on 10 May 2016. Whereas, respondents filed their "Motion to Lift Notices of Tax Lien Annotated on Properties Registered in the Name of [Respondents]"[165] (**Motion to Lift Notice of Lien**) on

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161 Id., Volume VI, pp. 2518-2522.
162 See Minutes of the Hearing and Resolution, both dated 28 April 2016, id., Volume V, pp. 2155-2156 and 2159-2160, respectively.
163 Id., pp. 2161-2171, with Manifestation and Compliance.
164 Id., pp. 2174-2178.
165 Id., pp. 2188-2202, with annexes.

30 May 2016. Petitioner failed to file a comment thereon despite due notice.[166]

In the Resolution dated 19 May 2016[167], the First Division resolved to defer the resolution of all pending incidents in deference to the Supreme Court's directives in its 06 April 2016 Decision. It also scheduled a clarificatory hearing on 24 May 2016 to address matters related to the parties' presentation of evidence as directed by the Supreme Court.

During the 24 May 2016 clarificatory hearing[168], the First Division granted both parties 15 days to submit their respective memoranda of evidence, specifying the documents and witnesses they intend to present. This directive rendered moot the similar instruction previously issued in the Resolution dated 28 April 2016.[169] The First Division also directed petitioner to file the proper motion on his or her position on whether a joint hearing on the MR[170] on the 2015 Resolution re: Jurisdiction[171] and the preliminary hearing should be conducted. Moreover, the case was set for a further clarificatory hearing on 30 June 2016.

Following the Court's directive, respondents filed their "Memorandum of Evidence"[172] on 08 June 2016, while petitioner filed his or her own "Memorandum of Evidence"[173] on 13 June 2016. Subsequently, on 21 June 2016, petitioner filed an "Amended Memorandum of Evidence"[174], which the First Division admitted on 29 June 2016.[175] Further, on 26 September 2016, petitioner filed a "Second Amended Memorandum of Evidence"[176], which the First Division admitted on 29 September 2016.[177]

166 See Records Verification dated 28 July 2016, id., p. 2295.
167 Id., pp. 2180-2182.
168 See Minutes of the Hearing and Order, both dated 24 May 2016, id., pp. 2183-2184 and 2185-2186, respectively.
169 Supra at note 162.
170 Supra at note 129.
171 Supra at note 126.
172 Division Docket, Volume V, pp. 2208-2249.
173 Id., pp. 2256-2259.
174 Id., pp. 2270-2278, with Motion for Leave to File and Admit Attached Amended Memorandum of Evidence.
175 See Order dated 29 June 2016, id., p. 2283.
176 Id., pp. 2382-2392, with Motion for Leave to File Second Amended Memorandum of Evidence.
177 See Order dated 29 September 2016, id., p. 2393.

On 13 June 2016, petitioner filed an "Omnibus Motion (1. To Resolve Pending [MR], and 2. To Defer Preliminary Hearing)"[178] (**Third Omnibus Motion**), with respondents' Comment/Opposition[179] thereto filed on 30 June 2016. The First Division granted the motion to defer the preliminary hearing pending the resolution of petitioner's MR on the 2015 Resolution re: Jurisdiction[180], thereby cancelling the clarificatory hearing previously scheduled for 30 June 2016.[181]

In the Resolution dated 22 August 2016[182], the First Division denied both petitioner's Third Omnibus Motion and Motion to Substitute Witness for lack of merit. The Court also granted petitioner's counsel 15 days file an FOE in connection with petitioner's MR on the 2015 Resolution re: Jurisdiction. Additionally, the preliminary hearing was scheduled for 15 September 2016 to address whether respondents should be required to post a surety bond and for the recall of respondents' witness Querido.

On 05 September 2016, respondents filed a "Request for Stipulation"[183], requesting petitioner or his or her duly authorized representative to agree to certain stipulations to simplify the proceedings and aid in the speedy resolution of this case. On 17 October 2016, petitioner filed a Comment[184] thereto, stating that he or she accepts respondents' proposed stipulations.

On 08 September 2016, petitioner filed an "Omnibus Motion (1. For Reconsideration of the Resolution dated August 22, 2016, and 2. For Clarification)"[185] (**Fourth Omnibus Motion**). Petitioner sought reconsideration of the 22 August 2016 Resolution and clarification on whether a joint hearing would still be conducted and whether petitioner's evidence would still be incorporated in the joint hearing.

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178 Id., pp. 2262-2268.
179 Id., pp. 2287-2292.
180 Supra at note 126.
181 See Order dated 29 June 2016, supra at note 175.
182 Division Docket, Volume V, pp. 2307-2314.
183 Id., pp. 2318-2359, with attached exhibits.
184 Id., pp. 2418-2421.
185 Id., pp. 2363-2368.

In the Resolution dated 14 September 2016[186], the First Division held in abeyance the resolution of respondents' Motion to Lift Notice of Lien until the termination of the preliminary hearing in this case.

During the 15 September 2016 preliminary hearing[187], the First Division noted that respondents had adopted the testimonies of their two (2) witnesses, Querido and RO Bernal, and would recall Querido if no stipulation were reached on the matters he intended to testify on. Regarding petitioner, the Court noted that he or she had adopted the testimonies of his or her six (6) witnesses and, in addition, intended to present two (2) other witnesses: Bato and RO Bernal. The Court scheduled the presentation of respondents' evidence for 23 November 2016, specifically for Querido's testimony, and petitioner's evidence for 25 January 2017 for Bato's testimony and 15 February 2017 for RO Bernal's testimony. As to petitioner's Fourth Omnibus Motion, the First Division declared it moot and academic.

On 03 October 2016, respondents filed an MR[188], seeking the reconsideration of the 14 September 2016 Resolution. They requested the immediate grant of their Motion to Lift Notice of Lien, the issuance of an order directing the Register of Deeds of General Santos City to promptly cancel and withdraw the annotation of the Notice of Tax Lien on Transfer Certificate of Title (**TCT**) No. 147-T-115448, and an order directing petitioner to account for and inform the Court and respondents of all notices of tax liens issued against their real properties. Additionally, respondents sought an order requiring petitioner to immediately cause the lifting or cancellation of all tax lien annotations on the real properties registered under their name. Petitioner failed to file a comment thereto despite due notice.[189]

In the Resolution dated 24 January 2017[190], the First Division denied petitioner's MR on the 14 September 2016 Resolution and still held in abeyance respondents' Motion to Lift Notice of Lien until further orders from the Court.

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186 Id., pp. 2372-2375.
187 See Minutes of the Hearing and Order, both dated 15 September 2016, id., pp. 2376-2377 and 2378-2380, respectively.
188 Id., pp. 2400-2407.
189 See Records Verification dated 10 November 2016, id., p. 2426.
190 Id., Volume VI, pp. 2506-2509.

Earlier, during the 23 November 2016 preliminary hearing on the issue of whether respondents should be required to post the surety bond, respondents' counsel manifested that he would be dispensing with the presentation of Querido in view of the position taken by petitioner on respondents' Request for Stipulation.[191]

On 08 December 2016, respondents filed their "[FOE] for [Respondents] (Preliminary Hearing regarding the Bond Requirement for Suspension of Collection of Taxes) with Motion for Leave to Correct Marking of Evidence"[192], with petitioner's Comment[193] thereto filed on 09 February 2017.

During the 25 January 2017 hearing[194], petitioner presented Bato, who testified through his Judicial Affidavit dated 22 April 2016[195] and declared that: (1) he is a mail courier tasked with delivering, receiving, and releasing mail or documents for members of the House of Representatives; (2) he personally released Registered Mail No. 3487 to Jamora on 09 July 2012; (3) Jamora is respondents' authorized representative, as he regularly picks up mail matters for respondent EDP and his specimen signature appears in the "List of Authorized Personnel to Pick-up Mails"[196]; and, (4) he witnessed Jamora personally sign the return card and the Mail Register[197] on 09 July 2012.

After completing Bato's testimony, the First Division rescheduled the presentation of petitioner's evidence for the testimony of RO Bernal, from 15 February 2017 to 29 March 2017.[198] However, upon petitioner's motions, the First Division further reset this hearing twice, from 29 March 2017 to 10 May 2017 and then from 10 May 2017 to 21 June 2017.[199]

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191 See Minutes of the Hearing and Order, both dated 23 November 2016, id., Volume V, pp. 2432-2434 and 2435-2436, respectively.

192 Id., pp. 2438-2499, with attached exhibits.

193 Id., Volume VI, pp. 2528-2540.

194 See Minutes of the Hearing and Order, both dated 25 January 2017, id., pp. 2510-2514 and 2515-2516, respectively.

195 Exhibit "R-25", id., Volume V, pp. 2115-2122, with attached exhibits.

196 Exhibit "R-23", id., p. 2121.

197 Exhibit "R-24", id., p. 2122.

198 See Minutes of the Hearing and Order, both dated 25 January 2017, supra at note 194.

199 See Orders dated 13 March 2017 and 09 May 2017, Division Docket, Volume VI, pp. 2548 and 2559, respectively.

In the Resolution dated 03 April 2017[200], the First Division admitted all of respondents' exhibits (*i.e.*, Exhibits "P-1" to "P-68", inclusive of sub-markings). As such, respondents were deemed to have rested their case in connection with the preliminary hearing on the bond requirement for the suspension of collection of taxes pursuant to the Supreme Court's 06 April 2016 Decision.

During the 21 June 2017 hearing[201], petitioner presented RO Bernal whose testimony[202] was offered to: (1) establish that both procedural and substantive due process were observed in assessing respondent EDP for his deficiency tax liabilities; (2) prove the validity of the FDDA; and, (3) demonstrate that the assessed deficiency IT for TYs 2008 and 2009 has factual and legal bases, and that respondents are liable to pay the aggregate amount of ₱2,229,020,905.50 for TYs 2008 and 2009.

Due to the absence of complete documents referenced in RO Bernal's Judicial Affidavit, the First Division rescheduled the continuation of RO Bernal's cross-examination to 23 August 2017, subject to a ₱5,000.00 fine.[203] The First Division later reduced the fine to ₱2,000.00.[204]

On 17 July 2017, petitioner filed a "Manifestation and Motion"[205] requesting permission to submit the judicial affidavits of his or her other witnesses. Respondents filed their Comment/Opposition[206] thereto on 09 August 2017.

On 25 July 2017, petitioner forwarded to the First Division the entire BIR Records of the present case consisting of six (6) folders.[207] The First Division noted the same in a Minute Resolution dated 07 August 2017.[208]

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200 Id., pp. 2552-2553.

201 See Minutes of the Hearing and Order, both dated 21 June 2017, id., pp. 2700-2701 and 2702-2703, respectively.

202 See Judicial Affidavit dated 20 June 2017, Exhibit "R-31", id., pp. 2710-2807, with attached exhibits.

203 See Minutes of the Hearing and Order, both dated 12 July 2017, id., pp. 2813-2814 and 2815-2817, respectively.

204 See Resolution dated 04 August 2017, id., Volume VII, pp. 3117-3119.

205 Id., Volume VI, pp. 2826-2829.

206 Id., Volume VII, pp. 3122-3126.

207 See Compliance dated 25 July 2017, id., Volume VI, pp. 2831-2833.

208 Id., Volume VII, pp. 3120-3121.

During the 23 August 2017 hearing[209], RO Bernal identified his Amended Judicial Affidavit dated 21 July 2017[210], and underwent cross-examination and redirect examination. At the same hearing, the First Division denied petitioner's request to present additional witnesses, without prejudice to petitioner's right to present witnesses at the appropriate time during the hearing on the merits. The Court clarified that the proceedings were merely for a preliminary hearing as directed by the Supreme Court. Furthermore, during the 15 September 2016 hearing, the parties had already agreed and specified the witnesses they intended to present. Allowing additional witnesses not previously agreed upon would cause undue delay and be prejudicial to the administration of justice.

After being granted an extension of time by the First Division[211], on 18 September 2017, petitioner filed his or her "[FOE] (Preliminary Hearing for Determination of Bond Incidental to Suspension of Collection of Taxes),"[212] consisting of Exhibits "**R-1**" to "**R-45**", inclusive of sub-markings, with respondents' Comment/Objections[213] thereto filed on 22 September 2017.

In the Resolution dated 02 November 2017[214], the First Division admitted petitioner's exhibits, except for Exhibit "**R-39**"[215], for failure to present the original for comparison and Exhibit "**R-43-5**"[216], for failure of the exhibit formally offered and identified to correspond with the document actually marked. In the same Resolution, the First Division also granted the parties a period of 30 days to file their respective memoranda. However, considering petitioner's "Motion for Partial Reconsideration [of the said Resolution] with Motion to Recall Witness"[217] (**MPR with Motion to Recall**), with respondents' Comment/Opposition[218] eventually filed on 05 January 2018, the First

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209 See Minutes of the Hearing and Order, both dated 23 August 2017, id., pp. 3133-3139 and 3140-3142, respectively.
210 Exhibit "R-46", id., pp. 2982-3110, with attached exhibits.
211 See Order dated 07 September 2017, id., pp. 3148-3149.
212 Id., pp. 3151-3166.
213 Id., pp. 3169-3175.
214 Id., pp. 3183-3185.
215 Instruction of Deputy Commissioner Legal and Inspection Group dated 21 June 2011.
216 Philippine Headline News Online Website article dated 08 December 2010.
217 Division Docket, Volume VII, pp. 3186-3189.
218 Id., pp. 3202-3204.

Division granted the parties respective motions to defer the filing of memorandum[219] in the Resolution dated 21 December 2017.[220]

In the Resolution dated 15 February 2018[221], the First Division granted petitioner's MPR and deemed the Motion to Recall moot. It also granted the parties another 30-day period to file their respective memoranda for the preliminary hearing regarding the bond requirement for suspension of collection of taxes.

Respondents filed their Memorandum[222] on 02 April 2018, while petitioner filed his or her Memorandum[223] on 11 May 2018 (after being granted four [4] extensions of time in the interest of justice[224]).

In the Resolution dated 27 July 2018[225] (**2018 Resolution re: Bond and Jurisdiction**), the First Division dispensed with the bond requirement upon finding that petitioner failed to comply with pertinent laws for the assessment and collection of the subject deficiency taxes. In the same Resolution, the First Division also (1) directed petitioner to desist from implementing the FDDA and to lift the WDL and WOGs pending final disposition of the present case; (2) granted respondents' Motion to Lift Notice of Lien and thereby, cancelled and withdrew the Notice of Tax Lien dated 08 January 2015 (with Entry No. 2015000067, served at the Register of Deeds of General Santos City for TCT No. 147-T-115448); (3) denied petitioner's MR on the 2015 Resolution re: Jurisdiction[226] for lack of merit; and, (4) set the Pre-Trial Conference for 30 August 2018.

On 22 August 2018, petitioner filed an MR[227] on the 2018 Resolution re: Bond and Jurisdiction, praying for the reconsideration, reversal and setting aside of the First Division's 2018 Resolution re: Bond and Jurisdiction. Respondents then filed their Opposition[228] thereto on

219 See "Motion to Defer the Filing of the Memorandum for [Respondents]" and "Motion for Deferment of Filing of Memorandum", id., pp. 3191-3193 and 3196-3198.
220 Id., p. 3201.
221 Id., pp. 3211-3213.
222 Id., pp. 3223-3280.
223 Id., pp. 3310-3350.
224 See Order dated 03 April 2018 and Resolutions dated 23 April 2018, 07 May 2018 and 16 May 2018, id., pp. 3283-3284, 3297, 3300 and 3308, respectively.
225 Id., pp. 3403-3440.
226 Supra at note 126.
227 Id., Volume VIII, pp. 3931-3954.
228 Id., pp. 4029-4051.

14 September 2018. Petitioner further filed a Reply[229] thereto on 24 October 2018.

RESPONDENTS' MOTION FOR SUMMARY JUDGMENT

On 24 August 2018, respondents filed a "Motion for Summary Judgment"[230], praying that the First Division render a summary judgment in the instant case by: (1) granting their Petition for Review; (2) declaring the FLD, FAN, FDDA, PCL, FNBS, and all other acts and issuances made by petitioner null and void; and, (3) cancelling the assessments for deficiency IT for TYs 2008 and 2009, amounting to an aggregate of ₱2,229,020,905.50, for being issued without factual or legal basis. Petitioner filed his or her Opposition[231] thereto on 06 September 2018. Respondents then filed a Reply[232] thereto on 12 September 2018.

Subsequently, in view of the reorganization of the Court's three (3) divisions, this case was transferred to Third Division[233] in accordance with the Order dated 25 September 2018.[234]

On 27 September 2018, petitioner filed a "Motion for Leave of Court to File a Rejoinder (To [Respondents'] Reply dated 12 September 2018)"[235] (**Motion for Leave of Court to File Rejoinder**), stating that respondents' Reply contained erroneous and misleading allegations and arguments that make it imperative for petitioner to file a rejoinder in order to correct the allegations and assist the Court in resolving respondents' Motion for Summary Judgment. Respondents filed their Opposition[236] thereto on 04 October 2018. Petitioner filed his or her Rejoinder[237] on 24 October 2018, pending the resolution of the Motion for Leave of Court to File Rejoinder.

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229 Id., Volume IX, pp. 4323-4333.
230 Id., Volume VIII, pp. 3474-3878, with annexes.
231 Id., pp. 3958-3976.
232 Id., pp. 3978-3996.
233 The Third Division was then composed of Associate Justice Erlinda P. Uy (Ret.), as Chairperson, and Associate Justice Ma. Belen M. Ringpis-Liban, as Member.
234 Division Docket, Volume VIII, p. 4054.
235 Id., Volume IX, pp. 4055-4057.
236 Id., pp. 4059-4065.
237 Id., pp. 4335-4353.

In the Resolution dated 09 October 2018[238], the Court submitted for resolution the following: (1) respondents' Motion for Summary Judgment; (2) petitioner's Motion for Leave of Court to File Rejoinder; and, (3) petitioner's MR on the 2018 Resolution re: Bond and Jurisdiction.

In the Resolution dated 21 December 2018[239], the Third Division granted petitioner's Motion for Leave of Court to File Rejoinder (and thereby, admitted as part of the case records the Rejoinder filed on 24 October 2018) and denied both petitioner's MR on the 2018 Resolution re: Bond and Jurisdiction, and respondents' Motion for Summary Judgment, for lack of merit. As to petitioner's MR, the Third Division ruled that the arguments presented were merely reiterations of matters already considered and resolved by the Court in the 2018 Resolution re: Bond and Jurisdiction. Regarding respondents' Motion for Summary Judgment, the Third Division ruled that respondents failed to establish the absence of a genuine issue. The Court further held that resolving the issues raised in the parties' respective pleadings would be premature without affording them the opportunity to present their evidence in a full-blown trial.

On 23 January 2019, respondents filed their "[MPR] (of the Resolution dated 21 December 2018)"[240] (**MPR on the 21 December 2018 Resolution**), seeking partial reconsideration of the 21 December 2018 Resolution insofar as the denial of their Motion for Summary Judgment is concerned. Petitioner filed his or her Opposition[241] thereto on 01 March 2019 (after being granted two [2] extensions of time by the Third Division[242]). Respondents further filed their Reply[243] thereto on 18 March 2019.

In the Resolution dated 10 April 2019[244], the Third Division denied respondents' MPR on the 21 December 2018 Resolution for lack of merit.

238 Id., pp. 4069-4070.
239 Id., pp. 4364-4380.
240 Id., pp. 4418-4446, with annex.
241 Id., pp. 4462-4469.
242 See Order dated 13 February 2019 and Resolution dated 07 March 2019, id., pp. 4456 and 4472, respectively.
243 Id., pp. 4527-4543.
244 Id., Volume X, pp. 4894-4898.

G.R. NOS. 242265, 245385, AND 247468: COMMISSIONER OF INTERNAL REVENUE V. THE COURT OF TAX APPEALS-FIRST DIVISION AND SPOUSES EMMANUEL D. PACQUIAO AND JINKEE J. PACQUIAO

Meanwhile, petitioner filed before the Supreme Court a "Petition for *Certiorari* (With Prayer for Issuance of [TRO] and/or WPI)" dated 02 October 2018[245] (**Second Petition for *Certiorari***), assailing the First Division's 2015 Resolution re: Jurisdiction[246] and 2018 Resolution re: Bond and Jurisdiction.[247] This was docketed as **G.R. No. 242265**. Petitioner requested, among others: (1) the issuance of a TRO or WPI to enjoin the CTA from proceeding further or issuing any additional orders, resolutions, or processes in CTA Case No. 8683; (2) the reversal and setting aside of the aforesaid resolutions; and, (3) the dismissal of the Petition for Review filed before CTA for lack of jurisdiction.

In a Resolution dated 21 January 2019[248], the Supreme Court dismissed the Second Petition for *Certiorari* on the ground that petitioner failed to sufficiently establish grave abuse of discretion committed by the CTA's First Division in rendering the 2015 Resolution re: Jurisdiction and 2018 Resolution re: Bond and Jurisdiction.

Petitioner subsequently filed an "MR [re: Resolution dated 21 January 2019] with Motion to Refer the Case to the Court *En Banc*"[249] (**MR on the 21 January 2019 Resolution**), to which respondents' filed their Comment[250] in compliance with the Supreme Court's directive in its Resolution dated 16 September 2020.[251] Petitioner later filed a "Motion for Early Resolution of the Case" dated 28 July 2021[252], requesting the Supreme Court resolved the case forthwith, grant his or her MR on the 21 January 2019 Resolution, and reinstate the Second Petition for *Certiorari*.

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245 Id., pp. 4083-4321, with annexes.
246 Supra at note 126.
247 Supra at note 225.
248 Division Docket, Volume X, p. 4910.
249 Id., pp. 4921-4932.
250 Id., Volume XII, pp. 5733-5758, with annexes.
251 Id., p. 5769.
252 Id., Volume XII, pp. 5797-5802.

In a separate Petition for *Certiorari* dated 04 March 2019[253] (**Third Petition for *Certiorari***) before the Supreme Court, docketed as **G.R. No. 245385**, petitioner also assailed the 2018 Resolution re: Bond and Jurisdiction, particularly its ruling that dispensed with the bond requirement. Respondents filed their Comment[254] thereto pursuant to the Supreme Court's directive in its Resolution dated 29 June 2020.[255] Petitioner subsequently filed a Reply[256] thereto pursuant to the Supreme Court's directive in its Resolution dated 19 January 2021.[257]

On the other hand, respondents, Spouses Pacquiao, filed a "Petition for *Certiorari (With Urgent Application for the Issuance of a Status Quo Ante Order/[TRO] and/or [WPI])*" dated 14 June 2019[258] (**Fourth Petition for *Certiorari***) before the Supreme Court, seeking to be declared entitled to summary judgment. This was docketed as **G.R. No. 247468**.

In the Resolution dated 03 July 2019[259], the Supreme Court consolidated the Third Petition for *Certiorari* (G.R. No. 245385) with the Fourth Petition for *Certiorari* (G.R. No. 247468).

Petitioner later filed a "Motion for Consolidation of Cases" dated 28 July 2021[260] (**Motion for Consolidation**), asking the Supreme Court to consolidate the Second Petition for *Certiorari* (G.R. No. 242265) with the Third Petition for *Certiorari* (G.R. No. 245385) and Fourth Petition for *Certiorari* (G.R. No. 247468). Respondents filed their Comment[261], asserting that the Supreme Court should deny both the Motion for Consolidation and the MR on the 21 January 2019 Resolution, citing that the Second Petition for *Certiorari* was not initiated by the Office of the Solicitor General (**OSG**) and was without merit.

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253 Id., Volume IX, pp. 4473-4523.
254 Id., Volume XII, pp. 5655-5673.
255 Id., p. 5614.
256 Id., pp. 5831-5851.
257 Id., p. 5984.
258 Id., Volume X, pp. 4935-4996.
259 Id., Volume XI, p. 5232.
260 Id., Volume XII, pp. 5852-5858.
261 Id., pp. 5990-6001.

In the Resolution dated 29 March 2022[262], the Supreme Court granted petitioner's Motion for Consolidation. The consolidated cases remain pending.

Respondents, Spouses Pacquiao, subsequently filed a Manifestation dated 18 October 2022[263] (**Manifestation re: assailed Decision**), informing the Supreme Court of the promulgation of the assailed Decision, which they noted constitutes a supervening event relevant to the resolution of the consolidated cases pending before it.

In the Resolution dated 17 April 2023[264], the Supreme Court noted respondents' Manifestation re: assailed Decision and directed petitioner to file a comment within 10 days from notice. Accordingly, petitioner filed a "Manifestation and Motion (In Lieu of Comment)" dated 03 October 2023[265], seeking the dismissal of the Fourth Petition for *Certiorari* (G.R. No. 247468) filed by respondents. Petitioner argued that the said petition had become moot and academic due to subsequent developments, specifically the promulgation of the Special Third Division's assailed Decision[266] and Resolution.[267]

PROCEEDINGS DURING THE PRE-TRIAL AND TRIAL PROPER

In compliance with the Court's directive, respondents filed their Pre-Trial Brief[268] on 24 August 2018, while petitioner filed his or her Pre-Trial Brief[269] on 29 August 2018 and an Amended Pre-Trial Brief[270] on 24 September 2019 (which the Third Division noted in a Minute Resolution dated 25 September 2019[271]). However, the Pre-Trial Conference, initially scheduled for 30 August 2018, was later rescheduled multiple times: first to 20 November 2018[272], then to

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262 Id., Volume XIII, no page numbers (inserted between pp. 6032 and 6033).
263 Id., pp. 6083-6137, with Annex "A" (copy of the assailed Decision).
264 Id., no page numbers (inserted after p. 6236).
265 *Rollo*, pp. 192-238, with annexes.
266 Supra at note 6.
267 Supra at note 7.
268 Division Docket, Volume VIII, pp. 3454-3465.
269 Id., pp. 3910-3918.
270 Id., Volume X, pp. 5001-5009.
271 Id., Volume XI, p. 5025.
272 See Minutes of the Hearing and Order, both dated 30 August 2018, id., Volume VIII, pp. 3920-3920-A and 3921-3922, respectively.

04 April 2019[273], to 11 July 2019[274] (upon petitioner's motion[275]), and lastly to 25 September 2019[276] (upon respondents' motion[277]).

At the 25 September 2019 Pre-Trial Conference[278], the Third Division granted both parties a period of twenty (20) days, or until 15 October 2019, within which to file their Joint Stipulation of Facts and Issues (**JSFI**) and a period of 30 days to submit the Judicial Affidavits of their respective witnesses. On 30 October 2019, the parties submitted their JSFI.[279]

In the Resolution dated 07 November 2019[280], the Third Division approved the parties' JSFI and terminated the pre-trial. Thereafter, it issued the Pre-Trial Order[281] on 20 November 2019.

Trial for the main case then ensued wherein both parties adopted the exhibits and the testimonies of their witnesses (which had already been offered and admitted during the previous proceedings). Respondents adopted the testimonies of the following witnesses: (1) Querido, who assisted them in preparing and filing their Annual ITRs; (2) NID RO Bernal; and, (3) ARMD Chief San Vicente. Meanwhile, petitioner adopted the testimonies of the following witnesses: (1) NID Chief-Supervisor Clemente; (2) NID IO Aquino; (3) ARMD RO Catolico; (4) NID IO Malonzo; (5) NID RO Sante; (6) Dela Cruz; (7) Bato; and, (8) NID RO Bernal.

During trial, respondents presented additional documentary and testimonial evidence. On 26 November 2019[282], they presented anew Querido, whose testimony was offered to establish that (1) the subject deficiency tax assessments are null and void, (2) respondents are not liable to pay deficiency IT and VAT for TYs 2008 and 2009 in the aggregate amount of ₱2,261,217,439.92, plus a 50% surcharge, deficiency

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273 See Resolution dated 21 December 2018, supra at note 239.
274 See Resolution dated 29 March 2019, Division Docket, Volume X, p. 4892.
275 See "Urgent Motion to Cancel and Rese Pre-Trial Conference", id., pp. 4885-4889.
276 See Resolution dated 04 July 2019, id., p. 4920.
277 See "Motion to Cancel Pre-Trial Conference", id., pp. 4912-4916.
278 See Minutes of the Hearing and Order, both dated 25 September 2019, id., Volume XI, pp. 5026 and 5027-5029, respectively.
279 Id., pp. 5170-5185.
280 Id., pp. 5201-5202.
281 Id., pp. 5204-5224.
282 See Minutes of the Hearing and Order, both dated 26 November 2019, id., pp. 5229 and 5230-5231, respectively.

interest and delinquency interest, and (3) the collection remedies pursued by petitioner in connection with the deficiency tax assessments violated respondents' right to due process.[283]

Regarding the nullity of the deficiency tax assessments, Querido testified that: (1) petitioner failed to validly issue and properly serve an NIC against respondents, as required under RR No. 12-99[284]; (2) petitioner failed to demonstrate the existence of a fraudulent pattern that would justify the issuance of LOAs covering TYs 1995 to 2009; (3) petitioner did not comply with the requirements for conducting a fraud audit investigation and issuing LOAs for multiple TYs against respondents; (4) petitioner failed to inform respondents of the factual and legal basis of the deficiency tax assessments related to their US-sourced income in 2008 and 2009; and, (5) petitioner disregarded the BEO provided by Top Rank, Inc., HBO and HBO Pay-Per-View, instead relying on "best possible sources" such as unverified newspaper accounts, in violation of the provisions of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

On 27 February 2020[285], respondents recalled Querido to the witness stand. He testified that his Supplemental Judicial Affidavit dated 22 October 2019[286] contained clerical errors in some exhibit references, which needed correction to ensure accuracy and prevent confusion.[287] At the conclusion of the hearing, the Third Division granted respondents' counsel a period of 20 days to file an FOE and allowed petitioner's counsel the same period to file a comment thereto. It also scheduled the presentation of petitioner's evidence, specifically the testimony of Assistant Commissioner James S. Roldan (**ACIR Roldan**), for 21 May 2020.

However, on 19 June 2020, due to the COVID-19 pandemic restrictions, the Third Division extended the deadline for respondents'

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283 See Supplemental Judicial Affidavit of Querido dated 22 October 2019, Exhibit "P-92", id., pp. 5058-5167, with attached exhibits.
284 Supra at note 45.
285 See Minutes of the Hearing and Order, both dated 27 February 2020, Division Docket, Volume XI, pp. 5253 and 5254-5255, respectively.
286 Supra at note 283.
287 See 2nd Supplemental Judicial Affidavit of Querido dated 21 February 2020, Exhibit "P-93", Division Docket, Volume XI, 5244-5250, with attached exhibits.

submission of their FOE and petitioner's corresponding comment. It also canceled the hearing previously scheduled for 21 May 2020.[288]

On 26 June 2020, respondents filed their FOE[289] consisting of Exhibits **"P-1"** to **"P-93-A"**, inclusive of sub-markings. Petitioner filed his or her Comment[290] thereto on 17 July 2020.

In the Resolution dated 08 October 2020[291] (**FOE Resolution**), the Third Division admitted respondents' exhibits, *except* Exhibits **"P-69"**, **"P-71"**, **"P-75"**, **"P-75-A"**, **"P-75-B"**, **"P-76"**, **"P-77"**, **"P-78"**, **"P-79"**, **"P-80"**, **"P-85"**, **"P-88"**, **"P-89"**, **"P-90"** and **"P-91"**[292], for failure to submit

288 See Resolution dated 19 June 2020, id., p. 5257.
289 Id., pp. 5258-5300.
290 Id., Volume XII, pp. 5521-5523.
291 Id., pp. 5543-5544.
292

Exhibit No.	Description
"P-69"	LOA No. LOA-2008-00049803 dated 19 March 2010 issued against respondent EDP (for the examination of all internal revenue taxes for the period of 01 January 2008 to 31 December 2008) and received on 25 March 2010.
"P-71"	Initial Assessment-Informal Conference dated 31 January 2012.
"P-75"	Letter dated 20 July 2012 (FLD Protest).
"P-75-A"	Signature of Perry L. Pe.
"P-75-B"	Signature of Jayson L. Fernandez.
"P-76"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to respondent EDP by GMA Network, Inc. for the period from 01 January 2009 to 31 December 2009.
"P-77"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to respondent EDP by Pilipino Telephone Corporation for the period from 01 January 2009 to 31 March 2009.
"P-78"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to respondent EDP by Oriental and Motolite Marketing Corporation for the period from 01 April 2009 to 30 May 2009.
"P-79"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to respondent EDP by Oriental and Motolite Marketing Corporation for the period from 01 October 2009 to 31 December 2009.
"P-80"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to respondent EDP by Commonwealth Foods, Inc. for the period from 01 May 2009 to 30 May 2009.
"P-85"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to respondent EDP by United Laboratories Inc. for the period from 01 January 2009 to 31 March 2009.
"P-88"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to respondent EDP by Ginebra San Miguel, Inc. for the date 05 June 2009. (Amount Withheld = ₱61,764.71)
"P-89"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to respondent EDP by Ginebra San Miguel, Inc. for the date 05 June 2009. (Amount Withheld = ₱882,352.94)
"P-90"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to respondent EDP by Ginebra San Miguel, Inc. for the date 29 June 2009. (Amount Withheld = ₱61,764.71)

the duly marked exhibits, and Exhibits **"P-81"**, **"P-82"**, **"P-83"**, **"P-84"**, **"P-86"** and **"P-87"**[293], for failure to present the originals for comparison. The initial presentation of petitioner's evidence, specifically the testimony of ACIR Roldan, was scheduled for 02 December 2020.

On 28 October 2020, respondents filed an "[MPR] with Tender of Excluded Evidence"[294] (**MPR with Tender of Excluded Evidence**) of the Third Division's FOE Resolution. Respondent filed his or her Comment[295] thereto on 25 November 2020.

In the Resolution dated 01 December 2020[296], the Third Division granted respondents' MPR and, thereby, admitted Exhibits **"P-69"**, **"P-71"**, **"P-75"**, **"P-75-A"**, **"P-75-B"**, **"P-76"**, **"P-77"**, **"P-78"**, **"P-79"**, **"P-80"**, **"P-85"**, **"P-88"**, **"P-89"**, **"P-90"** and **"P-91"**[297], and made part of the records Exhibits **"P-81"**, **"P-82"**, **"P-83"**, **"P-84"**, **"P-86"** and **"P-87."**[298]

During the 02 December 2020 hearing before the Third Division[299], respondent presented ACIR Roldan, who essentially

"P-91"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to respondent EDP by Ginebra San Miguel, Inc. for the date 29 June 2009. (Amount Withheld = ₱882,352.94)

293

Exhibit No.	Description
"P-81"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to respondent EDP by Commonwealth Foods, Inc. for the period from 01 November 2009 to 30 November 2009.
"P-82"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to respondent EDP by Procter & Gamble Distributing for the period from 01 October 2009 to 31 December 2009.
"P-83"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to respondent EDP by RFM Corporation for the period from 01 January 2009 to 31 March 2009.
"P-84"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to respondent EDP by RFM Corporation for the period from 01 October 2009 to 31 December 2009.
"P-86"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to respondent EDP by Magnolia Inc. for the period from 29 May 2009 to 29 May 2009.
"P-87"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to respondent EDP by Magnolia Inc. for the period from 30 June 2009 to 30 June 2009.

294 Division Docket, Volume XII, pp. 5545-5548.
295 Id., pp. 5594-5596.
296 Id., pp. 5599-5602.
297 Supra at note 292.
298 Supra at note 293.
299 See Minutes of the Hearing and Order, both dated 02 December 2020, Division Docket, Volume XII, pp. 5603 and 5604-5605, respectively.

testified that: (1) he was the head of the BIR's Enforcement and Advocacy Service, responsible for directing tax fraud operations, litigation, prosecution, and case development, overseeing RATE investigations, and maintaining the Legal Information System; (2) the audit of respondents for TYs 2008 and 2009 began in 2010, following the NID's preliminary investigation that found *prima facie* evidence of fraud in respondent EDP's TY 2009 income declaration; (3) respondent EDP declared only ₱39,027,194.00 in gross income for TY 2009, despite Creditable Withholding Tax (**CWT**) Certificates showing ₱109,494,574.86, resulting in an under-declaration of ₱70 million (179% of the declared income); (4) LOAs covering TYs 1995 to 2009 were issued under RMO Nos. 27-2010[300] and 43-90[301], which allow multiple-year audits for defined purposes, such as tracing transactions or identifying schemes; and, (5) due process was not violated, as the LOAs explicitly listed the covered years and complied with regulatory requirements.[302]

On 02 December 2020, petitioner filed an "Omnibus Motion (to Defer Submission of [FOE] and for Issuance of Subpoenas)"[303] (**Fifth Omnibus Motion**), requesting the Third Division to defer the submission of their FOE and to issue subpoenas *duces tecum* and *ad testificandum* directed to Dennis Cristopher Principe (**Principe**), Ramonchito L. Tomeldan (**Tomeldan**), Roy Laurca (**Laurca**) and Dante Navarro (**Navarro**). Respondents filed their Opposition[304] thereto on 14 December 2020.

In the Resolution dated 29 December 2020[305], the Third Division granted petitioner's Fifth Omnibus Motion. On 05 January 2021, the First Division issued separate subpoenas to Principe, Tomeldan, Laurca and Navarro, directing them to appear and testify on 27 January 2021.[306]

During the 27 January 2021 hearing before the Third Division[307], petitioner presented the managing editor of Manila Standard Today,

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300 Re-invigorating the Run After Tax Evaders (RATE) Program, and Amending Certain Portions of RMO No. 24-2008.
301 Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.
302 See Judicial Affidavit of Assistant Commissioner James H. Roldan, Exhibit "R-48", Division Docket, Volume XI, pp. 5190-5197.
303 Id., Volume XII, pp. 5606-5610.
304 Id., pp. 5615-5629.
305 Id., pp. 5635-5639.
306 See Subpoenas *Duces Tecum & Ad Testificandum*, all dated 05 January 2021, id., pp. 5640-5643.
307 See Minutes of the Hearing and Order, both dated 27 January 2021, id., pp. 5675 and 5678-5679.

Tomeldan, who identified a certified true copy of a newspaper article titled "Pacquiao set to pay more income tax, blames change of accountants" from the 20 December 2010 issue, marked as Exhibit "**R-43-4**." Respondents' counsel stipulated to the article's existence and publication, concluding Tomeldan's testimony. Respondents' counsel further stipulated to the existence and publication of additional articles by other intended witnesses who did not appear: (1) Laurca's 17 November 2010 Inquirer article (Exhibit "**R-43-1**"); (2) Navarro's 19 November 2009 Philstar article (Exhibit "**R-43-3**"); and, (3) Principe's 20 December 2010 Manila Standard Today article (Exhibit "**R-43-4**").

On 08 February 2021, petitioner filed his or her FOE[308] consisting of Exhibits "**R-1**" to "**R-46-1**", inclusive of sub-markings. Respondents filed their Comment/Objections[309] thereto on 19 February 2021.

In the Resolution dated 08 June 2021[310], the Third Division admitted petitioner's exhibits, *except* for Exhibits "**R-24-1**"[311], for not being found in the records, Exhibit "**R-39**"[312], for failure to present the original for comparison, and Exhibit "**R-43-5**"[313], for failure to correspond with the document actually marked. In the same Resolution, the Court granted the parties a period of 30 days to submit their respective memoranda.

In compliance with the Third Division's directive and after being granted extensions of time to file their respective memoranda[314], respondents filed their Memorandum on 27 October 2021[315], while petitioner also filed his or her own Memorandum[316] on the same date. Accordingly, in the Resolution dated 24 November 2021[317], the Third Division considered the case submitted for decision.

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308 Id., pp. 5680-5705.
309 Id., pp. 5712-5730.
310 Id., pp. 5772-5773.
311 Signature of Arnel C. Bato.
312 Supra at note 215.
313 Supra at note 216.
314 See Resolutions dated 23 July 2021 (for Petitioner) and 06 September 2021 (for Respondents), Division Docket, Volume XII, pp. 5794 and 5829, respectively.
315 Id., pp. 5862-5930.
316 Id., pp. 5934-5970.
317 Id., p. 5974.

SPECIAL THIRD DIVISION'S RULING (DECISION DATED 29 SEPTEMBER 2022 AND RESOLUTION DATED 17 FEBRUARY 2023)

On 29 September 2022, the Special Third Division[318] promulgated the assailed Decision[319], granting respondents' Amended Petition for Review[320] and cancelling the subject deficiency IT assessment in the aggregate amount of ₱2,229,020,905.50, inclusive of interests and surcharges, for TYs 2008 and 2009. The assailed Decision also set aside the PCL[321], WDL[322] and WoGs[323], and FNBS[324] issued against respondents. The dispositive portion reads:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **GRANTED**. Accordingly, the subject deficiency income tax assessment in the aggregate amount of ₱2,229,020,905.50, inclusive of interests and surcharges, for taxable years 2008 and 2009, the *Preliminary Collection Letter* dated July 19, 2013, the *Warrants of Distraint and/or Levy and Garnishment* dated July 1, 2013, and the *Final Notice Before Seizure* dated August 7, 2013, all issued against [respondents] are **CANCELLED** and **SET ASIDE**.
>
> [Petitioner] is hereby **ENJOINED** from proceeding with the collection of the said deficiency taxes against [respondents] during the pendency of the instant case.
>
> **SO ORDERED.**
>
> ...

The Special Third Division ruled as follows:

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318 Pursuant to CTA Administrative Circular No. 01-2022 dated 21 June 2022, which reorganized the Second and Third Divisions of the Court effective 27 June 2022, Associate Justice Erlinda P. Uy (Ret.) became the Chairperson of the Second Division. Consequently, in this case, the Third Division became a Special Third Division, with Associate Justice Ma. Belen M. Ringpis-Liban as Chairperson, Associate Justice Maria Rowena Modesto-San Pedro as Member, and Associate Justice Erlinda P. Uy (Ret.) as Special Member.

319 Supra at note 6.

320 Supra at note 107.

321 Exhibit "P-1", supra at note 26.

322 Exhibit "P-14 Suspension", supra at note 35.

323 Exhibit "P-21", "P-22", "P-24" to "P-42" and "P-43" to "P-55", supra at note 36.

324 Exhibit "P-10 Suspension", supra at note 29.

First, it has jurisdiction over the case. Although petitioner insists that respondents, Spouses Pacquiao, received the FDDA on 20 May 2013 through a certain Jamora, the latter's authority to receive the document on their behalf was not established. The Special Third Division found that the only valid service of the FDDA occurred on 02 July 2013, when a copy was delivered by the BIR's NID to Atty. Jason L. Fernandez (**Atty. Fernandez**), respondents' counsel. Since the Petition for Review[325] before Court in Division was filed within 30 days from 02 July 2013, specifically on 01 August 2014, Court in Division properly acquired jurisdiction over the case.

Second, respondents, Spouses Pacquiao, were not duly served with the NIC, rendering the assessment void for violating their right to due process.

Third, respondents, Spouses Pacquiao, were not duly informed of the basis for the tax assessment against them. In issuing the assessment, petitioner merely relied on unspecified "best possible sources" without identifying the documents used to compute the alleged deficiency taxes.

Fourth, the tax assessment lacks sufficient basis as it primarily relies on news articles that constitute "hearsay evidence, twice removed, and are thus without any probative value." While a tax assessment is presumed to be correct and regular, it must be deemed void if it is not supported by sufficient evidence.

Subsequently, on 26 October 2022, petitioner filed an MR[326] on the assailed Decision. After receipt of respondent's "Comment/Opposition [To [Petitioner]'s *Motion for Reconsideration* (Re: Decision Promulgated on 29 September 2022)]"[327], on 17 February 2023, the Special Third Division promulgated the assailed Resolution[328], denying petitioner's MR for lack of merit.

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325 Supra at note 37.
326 Division Docket, Volume XIII, pp. 6141-6182.
327 Id., pp. 6187-6216; Received by the Court on 06 December 2022.
328 Supra at note 7.

PROCEEDINGS BEFORE THE COURT *EN BANC*

Following petitioner's receipt of a copy of the assailed Resolution on 28 February 2023[329], a "Motion for Extension of Time to File Petition for Review"[330] was filed with the Court *En Banc* on 14 March 2023. On 30 March 2023 or within the 15-day extended period granted, petitioner filed the instant Petition for Review[331] seeking the reversal of the Special Third Division's assailed Decision[332] and Resolution.[333]

On 22 May 2023, the Court *En Banc* directed respondents to file a comment, not a motion to dismiss, within 10 days from notice.[334] On 30 May 2023, respondents filed a Comment[335] in compliance with the Court's directive.

In a Minute Resolution dated 03 July 2023[336], the Court *En Banc* referred the case to the Philippine Mediation Center – Court of Tax Appeals (**PMC-CTA**) for mediation pursuant to Section II of the "Interim Guidelines for Implementing Mediation in the [CTA]" (A.M. No. 11-1-5-SC-PHILJA). However, the parties later opted not to proceed with mediation.[337]

Accordingly, the Court *En Banc* submitted the case for decision on 10 October 2023.[338]

ISSUES

In the present Petition for Review before the Court *En Banc*, petitioner assigns the following errors to the Special Third Division's actions[339]:

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329 See Notice of Resolution dated 21 February 2023, *rollo*, p. 98.
330 Id., pp. 1-4.
331 Supra at note 1.
332 Supra at note 6.
333 Supra at note 7.
334 See Resolution dated 22 May 2023, *rollo*, pp. 110-111.
335 Id., pp. 112-186, with annexes.
336 Id., p. 189.
337 See PMC-CTA Form 6 – No Agreement to Mediate dated 08 August 2023, id., p. 190.
338 See Minute Resolution dated 10 October 2023, id., p. 191.
339 See Grounds of the Motion, Petition for Review, supra at note 1, pp. 9-10.

I.
THE SPECIAL THIRD DIVISION ERRED IN RULING THAT IT HAS JURISDICTION OVER THE CASE;

II.
THE SPECIAL THIRD DIVISION ERRED IN RULING THAT RESPONDENTS, SPOUSES EMMANUEL D. PACQUIAO AND JINKEE J. PACQUIAO, WERE DEPRIVED DUE PROCESS DURING THE ADMINISTRATIVE PROCEEDINGS;

III.
THE SPECIAL THIRD DIVISION ERRED IN RULING THAT RESPONDENTS, SPOUSES EMMANUEL D. PACQUIAO AND JINKEE J. PACQUIAO, WERE NOT INFORMED OF THE BASIS OF THE ASSESSMENT; AND,

IV.
THE SPECIAL THIRD DIVISION ERRED IN RULING THAT THE ASSESSMENT HAS NO BASIS.

ARGUMENTS

PETITIONER'S ARGUMENTS

On the first assignment of error regarding jurisdiction, petitioner argues that sufficient evidence was presented to establish that respondent EDP received the FDDA[340] through Jamora on 20 May 2013. Petitioner asserts that the taxpayer's actual receipt is not required for valid personal service, nor is a Special Power of Attorney (**SPA**) necessary to authorize receiving clerks. Petitioner further highlights that respondents raised no objection when Jamora received other notices from the BIR, such as the PAN[341], FLD[342], and PCL[343], and promptly responded to those notices. More significantly, respondent EDP did not repudiate Jamora's act of receiving the PCL, despite being present in his office at the time. Regarding the earlier service of the FDDA by licensed courier, petitioner maintains that RR No. 12-99[344] does not prohibit this mode of service.

340 Exhibit "P-60-1", supra at note 24.
341 Exhibit "R-42", supra at note 20.
342 Exhibit "R-19", supra at note 22.
343 Exhibit "P-1", supra at note 26.
344 Supra at note 45.

On the second assignment of error regarding due process, petitioner asserts that respondents did, in fact, receive the NIC, as evidenced by their Protest[345] to the FLD, which states: "During the informal conference, it appeared that the figured (sic) were not based on actual transaction documents. . ." Petitioner argues that due process in administrative proceedings was satisfied, as respondents were afforded the opportunity to explain and defend themselves.

On the third and fourth assignments of error regarding the basis of the assessment, petitioner contends that the law does not require source documents to be attached to the FLD. It is sufficient for the FLD to state the facts and the law on which the assessment is based. In this case, petitioner asserts that due to respondent EDP's failure to provide the requested documents, reliance on other best possible sources, such as the boxing purse, pay-*per*-view share, and closed-circuit sales share, was necessary. Contrary to the findings of the Special Third Division, newspaper clippings were not the sole basis of the assessment. Petitioner emphasizes that an investigation was conducted and information was obtained from third-party sources.

Lastly, assessments are presumed correct and made in good faith. An assessment based on estimates is considered *prima facie* valid and lawful, provided it was not determined arbitrarily or capriciously.

RESPONDENTS' ARGUMENTS

At the outset, respondents assert that the present petition should be dismissed outright due to forum shopping and petitioner's failure to comply with the certification requirements under Section 5, Rule 7 of the Rules of Court (**ROC**).

As to the issues raised in the present petition, respondents argue that these pertain to evidentiary matters and that the presumption of correctness of tax assessments does not apply to RATE cases, as fraud must be proven with clear and convincing evidence. In this case, petitioner's evidence failed to demonstrate compliance with the established rules on service of notice to taxpayers and to show that the tax assessment was based on facts appearing in the record. Respondents

345 Exhibit "P-75", supra at note 23.

highlight that the FLD[346] is nearly a verbatim reproduction of the PAN[347] and does not disclose the source of the BIR's data, which was given more weight than the documents submitted by respondents. Moreover, the exhibits specifically enumerated in the original Amended Petition for Review[348] reveal that the evidence is grossly insufficient to substantiate the findings of fraud and the deficiency tax liabilities stated in the disputed FLD[349] and FDDA.[350]

RULING OF THE COURT

Before going into the merits of the case, We shall first determine the timeliness of the present petition and whether petitioner committed forum shopping in filing the same.

THE PETITION FOR REVIEW WAS TIMELY FILED.

The Special Third Division issued the assailed Resolution[351] denying petitioner's MR[352] on the assailed Decision[353] on 17 February 2023. Petitioner received the assailed Resolution on 28 February 2023.[354]

Under Section 2(a)(1)[355], Rule 4, in relation to Section 3(b)[356], Rule 8, of the RRCTA, petitioner had 15 days from 28 February 2023, or until

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346 Exhibit "R-19", supra at note 22.
347 Exhibit "R-42", supra at note 20.
348 Supra at note 107.
349 Exhibit "R-19", supra at note 22.
350 Exhibit "P-60-1", supra at note 24.
351 Supra at note 7.
352 Supra at note 326.
353 Supra at note 6.
354 See Notice of Resolution dated 21 February 2023, supra at note 329.
355 **SEC 2**. *Cases Within the Jurisdiction of the Court En Banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — **Bureau of Internal Revenue**, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.] (Emphasis supplied.)
356 **SEC. 3**. *Who may appeal; period to file petition.* —
...
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for

15 March 2023, within which to file an appeal before this Court. On 14 March 2023, petitioner asked for an additional period of 15 days, or until 30 March 2023, within which to file a Petition for Review.[357] The Court *En Banc* granted the same in a Minute Resolution dated 16 March 2023.[358] Accordingly, petitioner timely filed the present petition on 30 March 2023.[359]

PETITIONER DID NOT COMMIT FORUM SHOPPING IN FILING THE PRESENT PETITION FOR REVIEW.

Respondents, Spouses Pacquiao, invoke the rule against forum shopping as a ground for dismissing the present petition. They highlight that petitioner previously filed the Second Petition for *Certiorari*[360] with the Supreme Court, docketed as G.R. No. 242265, seeking an order to dismiss the case before Court in Division for lack of jurisdiction.

As detailed in the facts of this case, said Petition for *Certiorari* was dismissed by the Supreme Court, in its 21 January 2019 Resolution[361], due to petitioner's failure to establish grave abuse of discretion committed by the CTA's First Division in rendering the 2015 Resolution re: Jurisdiction and 2018 Resolution re: Bond and Jurisdiction. However, as of the date of filing the present petition before the Court *En Banc*, petitioner's MR[362] on the 21 January 2019 Resolution in G.R. No. 242265—consolidated with G.R. Nos. 245385 and 247468—remains unresolved.

Given that the present petition also seeks to dismiss the original petition before the Court in Division on the same jurisdictional ground, respondents argue that petitioner has engaged in forum shopping.

The dissent is of the view that the present petition must be dismissed on the ground of forum shopping, as there are pending

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costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

357 See Motion for Extension of Time to File Petition for Review, *rollo*, pp. 1-4.

358 Id., p. 6.

359 Supra at note 1.

360 Supra at note 245.

361 Supra at note 248.

362 Supra at note 249.

Petitions for *Certiorari* before the Supreme Court involving the same parties, the same arguments, the same relief sought, and identical causes of action. Thus, a judgment in those cases would constitute *res judicata* in the present petition.

While an appeal, such as the present petition, renders a pending Petition for *Certiorari* superfluous, as held in *Irene Villamar-Sandoval v. Jose Cailipan, et al.*[363] (**Villamar-Sandoval**), the dissent maintains that this Court cannot preempt the Supreme Court's action on the said pending Petitions for *Certiorari*, as the possibility of contradictory judicial decisions still subsisted at the time the present petition was filed.

We cannot sustain respondents' contention that petitioner is guilty of forum shopping.

The rule against forum shopping is found under Section 5, Rule 7 of the ROC:

> ...
> Section 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) calendar days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing.

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363 G.R. No. 200727 (Resolution), 04 March 2013.

> The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.
>
> ...

The essence of forum-shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. It exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. On the other hand, for *litis pendentia* to be a ground for the dismissal of an action, the following requisites must concur: (**a**) identity of parties, or at least such parties who represent the same interests in both actions; (**b**) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and, (**c**) the identity with respect to the two (2) preceding particulars in the two (2) cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.[364]

In this case, unlike the present Petition for Review[365], petitioner's earlier Second Petition for *Certiorari*[366] (G.R. No. 242265) and Third Petition for *Certiorari*[367] (G.R. No. 245385) do not challenge a final judgment but rather interlocutory orders, particularly the First Division's 2015 Resolution re: Jurisdiction[368] and 2018 Resolution re: Bond and Jurisdiction[369], which are the proper subjects of a *certiorari* petition. Although the parties are the same, the causes of action and the reliefs are patently different. The Petitions for *Certiorari* center on the alleged grave abuse of discretion by the First Division in issuing the said interlocutory orders, whereas the present Petition for Review assails a final judgment on the merits. Stated differently, while both petitions seek the dismissal of the original Amended Petition for Review[370] due to

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364 *Sps. Apolinario Melo and Lilia T. Melo, and Julia Barreto v. The Hon. Court of Appeals and Arsenia Coronel, G.R. No. 123686, 16 November 1999.*
365 Supra at note 1.
366 Supra at note 245.
367 Supra at note 253.
368 Supra at note 126.
369 Supra at note 225.
370 Supra at note 107.

lack of jurisdiction, the present Petition for Review specifically aims to reverse and set aside the Special Third Division's assailed Decision[371] and Resolution[372], both of which addressed not only the jurisdictional issues but also the merits of the case.

In *International School, Inc. (Manila) v. Hon. Court of Appeals, Spouses Alex and Ophelia Torralba*[373], the Supreme Court held that there is no forum shopping when a party questions an interlocutory order (granting execution pending appeal) in one petition while questioning the decision on the merits in a separate regular appeal, *viz*:

> ...
>
> Forum-shopping is present when in the two or more cases pending there is identity of parties, rights or causes of action and reliefs sought. While there is an identity of parties in the appeal and in the petition for review on certiorari filed before this Court, it is clear that the causes of action and reliefs sought are unidentical, although petitioner ISM may have mentioned in its appeal the impropriety of the writ of execution pending appeal under the circumstances obtaining in the case at bar. **Clearly, there can be no forum-shopping where in one petition a party questions the order granting the motion for execution pending appeal, as in the case at bar, and, in a regular appeal before the appellate court, the party questions the decision on the merits which finds the party guilty of negligence and holds the same liable for damages therefor. After all, the merits of the main case are not to be determined in a petition questioning execution pending appeal and vice versa. Hence, reliance on the principle of forum-shopping is misplaced.**[374]
>
> ...

Beyond the distinction between a *certiorari* petition and a regular appeal (which justifies the pursuit of both remedies without violating the rule against forum shopping), it is also worth noting that in *Villamar-Sandoval*, the Supreme Court held that once a decision on the main case is rendered, any pending Petition for *Certiorari* challenging interlocutory orders becomes moot, as follows:

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[371] Supra at note 6.
[372] Supra at note 7.
[373] G.R. No. 131109, 29 June 1999.
[374] Citations omitted and emphasis supplied.

...

It is well-settled that the remedies of appeal and *certiorari* are mutually exclusive and **not alternative or <u>successive</u>**. The simultaneous filing of a petition for certiorari under Rule 65 and an ordinary appeal under Rule 41 of the Revised Rules of Civil Procedure cannot be allowed **<u>since one remedy would necessarily cancel out the other</u>**. The existence and availability of the right of appeal proscribes resort to *certiorari* because one of the requirements for availment of the latter is precisely that there should be no appeal.

Corollary thereto, an appeal renders a pending petition for certiorari superfluous and mandates its dismissal. As held in *Enriquez v. Rivera*:

> The general rule is that *certiorari* will not lie as a substitute for an appeal, for relief through a special action like *certiorari* may only be established when no remedy by appeal lies. The exception to this rule is conceded only "where public welfare and the advancement of public policy so dictate, and the broader interests of justice so require, or where the orders complained of were found to be completely null and void, or that appeal was not considered the appropriate remedy, such as in appeals from orders of preliminary attachment or appointments of receiver." (*Fernando v. Vasquez*, L-26417, 30 January 1970; 31 SCRA 288). For example, *certiorari* maybe available where appeal is inadequate and ineffectual (*Romero Sr. v. Court of Appeals*, L-29659, 30 July 1971; 40 SCRA 172).
>
> None of the exceptional circumstances have been shown to be present in this case; hence the general rule applies in its entirety. **<u>Appeal renders superfluous a pending petition for *certiorari*, and mandates its dismissal.</u> In the light of the clear language of Rule 65 (1), this is the only reasonable reconciliation that can be effected between the two concurrent actions: <u>the appeal has to be prosecuted, but at the cost of the petition for certiorari, for the petition has lost its *raison d'etre*</u>. To persevere in the pursuit of the writ would be to engage in an enterprise which is unnecessary, tautological and frowned upon by the law.** (Emphasis and underscoring supplied.)

Applying the foregoing principles to the case at bar, it is clear that **<u>respondents' January 11, 2011 petition for *certiorari* was rendered superfluous by their January 22, 2011 appeal</u>**.

...

It should be noted that respondents' petition for *certiorari* had long become moot by the RTC's January 11, 2011 Decision. In particular, the grant of the petition for *certiorari* on mere incidental matters of the proceedings would not accord any practical

relief to respondents because a decision had already been rendered on the main case and therefore, may be elevated on appeal. Lest it be misunderstood, a case becomes moot when no useful purpose can be served in passing upon its merits. As a rule, courts will not determine a moot question in a case in which no practical relief can be granted.

In view of the above-discussed considerations and considering the fact that respondents' petition for *certiorari* cannot anymore be dismissed, the Court is constrained to set aside the September 30, 2011 Decision and February 1, 2012 Resolution of the CA. Consequently, **this course of action will allow the CA Division where the appeal of the main case is pending to appropriately pass upon the merits of the RTC's January 11, 2011 Decision including all assailed irregularities in the proceedings such as the validity of the default orders.** To rule otherwise would only serve to perpetuate the procedural errors already committed in this case.[375]

...

In *Villamar-Sandoval*, the Regional Trial Court (**RTC**) declared therein respondents in default, prompting them to file a Petition for *Certiorari* with the Court of Appeals (**CA**) to challenge the default orders. While this petition was pending, the RTC rendered a decision on the main case. Subsequently, therein respondents filed a Notice of Appeal. The Supreme Court ruled that the Petition for *Certiorari* had become moot due to the RTC's decision on the merits, and nullified the CA's rulings that reversed the RTC's default orders. This allowed the merits of the RTC's decision to be reviewed *via* appeal.

As evident from the foregoing pronouncement, a decision on the main case renders any pending Petition for *Certiorari* against interlocutory orders moot. Consequently, the Court has two (2) options: (1) to dismiss any pending Petition for *Certiorari*, as it would offer no practical relief; or, (2) to set aside any order granting the Petition for *Certiorari*.

In this case, it is also important to highlight that when petitioner filed the two (2) Petitions for *Certiorari* before the Supreme Court, no TRO was issued. Consequently, the proceedings in the main case were expected to continue in the ordinary course. As a result, the Special

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[375] Citations omitted, emphasis and underscoring in the original text and supplied.

Third Division proceeded with the trial and eventually rendered the assailed Decision[376] and Resolution.[377]

With the issuance of the Special Third Division's assailed Decision and Resolution, the pending Petitions for *Certiorari* before the Supreme Court became *ipso facto* moot. Accordingly, petitioner is justified in pursuing the present Petition for Review.

We shall now determine the merits of this case.

This Court finds that the present Petition for Review[378] is a mere rehash of the issues already presented, duly resolved and passed upon by the Special Third Division in the assailed Decision and Resolution.

It is worth mentioning that petitioner's discussion in this petition is substantially a reiteration of the discussion in his or her MR[379] on the assailed Decision. Nevertheless, for emphasis and for petitioner's further enlightenment, We will oblige to discuss anew the more salient points in *seriatim*.

THE COURT IN DIVISION VALIDLY ACQUIRED JURISDICTION OVER THIS CASE.

Petitioner argues that the Special Third Division erred in ruling that it had jurisdiction over the case, asserting that sufficient evidence was presented to establish that respondent EDP's Congressional Office received the FDDA[380] through Jamora on 20 May 2013. Petitioner further contends that actual receipt by the taxpayer is not required for valid personal service, nor is an SPA necessary for receiving clerks.

Upon careful review of the records and arguments presented, the Court *En Banc* finds no merit in petitioner's contentions. The points raised in the present Petition for Review have been extensively

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[376] Supra at note 6.
[377] Supra at note 7.
[378] Supra at note 1.
[379] Supra at note 326.
[380] Exhibit "P-60-1"/Exhibit "R-1", supra at note 24.

addressed in the Special Third Division's assailed Decision[381] and Resolution.[382]

As previously held, the reckoning point for the 30-day period to file an appeal before the Court in Division is the service of the FDDA on respondents' counsel, Atty. Fernandez, on 02 July 2013, and not the service on Jamora on 20 May 2013.

The assertion that Section 6[383], Rule 13 of the ROC governs the service of the FDDA is misplaced. Said rule pertains only to the service of court pleadings, motions, notices, orders, judgments, and other court-issued papers, and does not extend to non-court documents such as BIR issuances, including the FDDA.

Instead, the applicable rule for service of deficiency tax notices is RR No. 12-99[384], specifically Section 3.1.7[385], which mandates personal service to the taxpayer or his/her duly authorized representative, or service through registered mail. Service on a taxpayer's duly authorized representative is considered valid service to the taxpayer, regardless of the representative's location, provided they are clearly and properly authorized by the taxpayer.

Petitioner's reliance on the receipt of other BIR notices by Jamora is equally unavailing. An implied agency to receive the FDDA was never

381 Supra at note 6.

382 Supra at note 7.

383 The version of Section 6, Rule 13 prior to the amendment by A.M. 19-10-20-SC, or the 2019 Amendments to the 1997 Rules of Civil Procedure, is the version applicable to the instant case. Section 6, Rule 13 reads: "SEC. 6. *Personal Service.* — Service of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein."

384 Supra at note 45.

385 3.1.7. *Constructive Service.* — If the notice to the taxpayer herein required is served by registered mail, and no response is received from the taxpayer within the prescribed period from date of the posting thereof in the mail, the same shall be considered actually or constructively received by the taxpayer. If the same is personally served on the taxpayer **or his duly authorized representative** who, however, refused to acknowledge receipt thereof, the same shall be constructively served on the taxpayer. Constructive service thereof shall be considered effected by leaving the same in the premises of the taxpayer and this fact of constructive service is attested to, witnessed and signed by at least two (2) revenue officers other than the revenue officer who constructively served the same. The revenue officer who constructively served the same shall make a written report of this matter which shall form part of the docket of this case (see illustration in ANNEX D hereof). (Emphasis and underscoring supplied)

sufficiently established by petitioner, and the authority of Jamora to receive such notices on behalf of respondent EDP was not clearly demonstrated.

We quote, with approval, the earlier disquisitions establishing that Jamora could not be deemed 'duly authorized' to receive the subject FDDA:

First Division's 2015 Resolution re: Jurisdiction[386]

...

In the instant case, to establish [petitioner]'s claim that Mr. Jamora is the "duly authorized representative" of [respondents], Ms. Virma C. Clemente, [petitioner]'s witness, testified, in part, follows:

Q9: Who received the copy of the Final Decision on Disputed Assessment issued against petitioner?

A9: It was received by the authorized receiving officer Mr. Erwin Jamora on the same date, May 20, 2013.

...

Q12: Will you know who this Erwin Jamora is?

A12: He is the authorized receiving officer of [respondent] Emmanuel D. Pacquiao.

Q13: How did you know he was an authorized receiving officer?

A13: When we entered [respondent] Emmanuel D. Pacquiao's office we identified ourselves to Mr. Erwin Jamora as BIR Revenue Officers and that we were there to serve the FDDA on [respondent] Emmanuel D. Pacquiao's protest. We then inquired if [respondent] Emmanuel D. Pacquiao was there to receive the FDDA. Mr. Jamora said Emmanuel D. Pacquiao was out but he was the one who officially receives all communications to [respondent] Emmanuel D. Pacquiao.

Q14: What happened after that?

A14: We then showed our BIR ID's and then asked him to show us his ID. Mr. Erwin Jamora then showed us his ID.

386 Supra at note 126.

Upon being cross-examined by [respondents]' counsel, Atty. Jason L. Fernandez, Ms. Clemente testified as follows:

ATTY. FERNANDEZ:

Q. But, isn't it a fact that you mentioned in A13 that Mr. Jamora said that, and I quote, 'Mr. Jamora said that Emmanuel D. Pacquiao was out.' And therefore, you really have no basis to assume that petitioner received the FDDA when you went to the Batasan Complex on May 20, 2013?

MS. CLEMENTE:

A. Because, Sir, we asked him, and I will quote, I'll tell you in Tagalog what he said, I asked him, '*Sir, nandiyan po ba si Congressman Pacquiao?,*' and he answered '*wala po.*' 'Because we have some important documents *importante po itong makarating sa kanya this is from BIR,*' I told him, then he said '*Ako po ang authorized representative to receive all the documents.*'

ATTY. FERNANDEZ:

Okay.

MS. CLEMENTE:

A. He even informed me, '*are you one of the indigent?,*' 'No, we are from BIR,' I told him.

ATTY. FERNANDEZ:

Okay, thank you. Thank you for that.

Q. So, you claim in A13 of your Judicial Affidavit that Mr. Jamora, and this is consistent with what you just said, that he is the one who officially receives all communications to [respondent] Emmanuel Pacquiao, am I correct?

MS. CLEMENTE:

A. Yes, Sir.

ATTY. FERNANDEZ:

Q. Now, do you have anything in writing from Congressman Pacquiao which authorizes Mr. Jamora to receive notices from the BIR on his behalf?

MS. CLEMENTE:

A. None, Sir. But the mere fact that, (interrupted)

ATTY. FERNANDEZ:

That's all.

MS. CLEMENTE:

A. Okay.

ATTY. FERNANDEZ:

Okay.

From the foregoing testimonies of Ms. Clemente, We fail to see that [respondents] "duly authorized" Mr. Jamora to receive the subject FDDA. It must be pointed out that in the Rallos case, earlier cited, requires that parties to the agency (i.e., the principal and agent) must give their consent to the agency. Here, [petitioner] failed to establish the consent of the [respondents], as principals, to the supposed agency. Being a bilateral act, a simple query to, and a mere affirmative answer from, Mr. Jamora, as the supposed agent whether he or she is authorized representative by [respondents] to receive the FDDA will not suffice.

Furthermore, We entertain grave doubts as to whether Mr. Jamora was indeed a "duly authorized representative" of [respondents] to receive the said FDDA. It is the testimony of Ms. Clemente, that after being informed by Ms. Clemente that she and her companions are from the BIR, Mr. Jamora still asked this question: "are you one of the indigent?" Logically, for one who is "properly" and "regularly" authorized by [respondents] to receive the subject FDDA, such agent would be expectantly familiar with said BIR notice.

Moreover, Ms. Clemente's testimony that she asked Mr. Jamora for his identification card is contradicted by [petitioner]'s other witness, Mr. Ferdinand G. Malonzo, who was one of the BIR employees who were with Ms. Clemente, when they went to the Batasan Complex. At the hearing held on January 28, 2014, Mr. Malonzo, upon being asked by the Presiding Justice, testified as follows:

JUSTICE DEL ROSARIO:

Could you describe to me how Mr. Jamora look, what is the height of Mr. Jamora?

MR. ALONZO:

A. Ah, maybe, (interrupted)

JUSTICE DEL ROSARIO:

What is your height, actually?

MR. ALONZO:

A. 5'10, your Honors.

JUSTICE DEL ROSARIO:

And, is he shorter than you are?

MR. ALONZO:

A. Yes, your Honors.

JUSTICE DEL ROSARIO:

How about the body built?

MR. ALONZO:

A. Medium build.

JUSTICE DEL ROSARIO:

Medium build.
So, did you care to ask him any I.D., Identification Card to confirm that he is actually a staff of [respondents]?

MR. ALONZO:

A. **No, your Honors.**

The said conflicting testimonies cast doubts on the truthfulness of the claims by the BIR employees, who went to serve the subject FDDA at the Batasan Complex, that they have verified the identity and authority of Mr. Jamora to receive the said FDDA.

The subsequent receipt of Mr. Jamora of the Preliminary Collection Letter (PCL) dated July 19, 2013 is of no moment. It does not make Mr. Jamora the duly authorized representative of [respondents] in receiving the subject FDDA. This must be so because the circumstances obtaining in the receipt of the same FDDA is not the same as when the said PCL was received. Specifically, when the PCL was received, [respondent] Emmanuel D. Pacquiao (EDP) was present in his office at the Batasan Complex, wherein petitioner EDP can easily

give his consent; while when the FDDA was received, petitioner EDP was not present therein, and the immediate giving of consent cannot readily be had.

In addition, it appears that the BIR, at a certain point, did not recognize the supposed personal service of the subject FDDA to [respondents], through Mr. Jamora, at the House of Representatives, Batasan Complex, Quezon City. In the said PCL," it states:

> Our records show that on May 17, 2013 **the Final Decision on Disputed Assessment (FDDA) 2013-0002 Promulgated on May 14, 2013 signed by Kim S. Jacinto-Henares, Commissioner of Internal Revenue <u>was sent thru LBC to your registered addresses</u> for the collection of the deficiency income tax** pursuant to Letter of Authority (LOA) Nos. 00044656 dated July 27, 2010 converted into eLOA 211-2010-0000221 and 211-2010-00000226 dated December 21, 2010, described hereunder which remains unpaid up to date.

It is noteworthy that the said PCL does not contain any statement that, nor the premise thereof anchored on, the personal service made to [respondents] of the said FDDA, through their duly authorized representative, Mr. Jamora-a fact material to the tax collection process of the assessed tax. If there was indeed a valid service of the subject FDDA at the Batasan Complex, then why was it not mentioned in the said PCL?

Be that as it may, even granting that Mr. Jamora was indeed an agent of [respondents], his act cannot be deemed as performed within his authority, in the absence of a written power of attorney executed by [respondents], pursuant to Article 1900 of the Civil Code of the Philippines, *viz*:

> Art. 1900. **<u>So far as third persons are concerned</u>, an act is deemed to have been performed within the scope of the agent's authority, <u>if such act is within the terms of the power of attorney, as written</u>**, even if the agent has in fact exceeded the limits of his authority according to an understanding between the principal and the agent.

It is clear from the testimony of [petitioner]'s witness, Ms. Clemente, that the BIR does not have "anything in writing from Congressman Pacquiao which authorizes Mr. Jamora to receive notices from the BIR on his behalf". Thus, there being no written power of attorney from which this Court can verify the terms thereof, We cannot conclude that the act of receiving the FDDA was within the scope of Mr. Jamora's authority, insofar as the BIR is concerned.[387]

...

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387 Citations omitted, emphasis, italics and underscoring in the original text.

First Division's 2018 Resolution re: Bond and Jurisdiction[388]

...

In seeking the reversal thereof, [petitioner] offered the testimony of Arnel Bato, who occupies the position of Mail Courier I, with office address at Records Management Service, House of Representatives, Batasan Hills, Quezon City. He testified that Jamora is authorized to receive communications that are delivered at the Congressional office of petitioner EDP. In support thereof, [petitioner] offered the *List of Authorized Personnel to Pick-Up Mails* Certified by Atty. Ricardo Bering, which included the name of Jamora as one of the authorized personnel to pick-up mail matters on behalf of petitioner EDP.

We find the foregoing insufficient to prove that Edwin Jamora had been validly constituted as the duly authorized representative of [respondents].

A perusal of [petitioner]'s arguments in his motion as well as the evidence presented during the preliminary hearing show that [petitioner] failed to sufficiently prove the authority of Edwin Jamora to receive the subject FDDA on behalf of [respondents].

...

Article 1868 of the Civil Code defines agency as a contract where "a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."

In the case of *Spouses Fernando and Lourdes Viloria v. Continental Airlines*, the Supreme Court had the occasion to expound on the elements of agency, to wit:

> The elements of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for him/herself; and (4) the agent acts within the scope of his/her authority. **As the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it.** Absent such mutual intent, there is generally no agency.

388 Supra at note 225.

> Applying the foregoing rule in this case, there must be on the part of the [respondents], an actual intention to appoint a duly authorized representative to receive the subject FDDA. In the same manner, as to the agent or the duly authorized representative, there must be an intention to accept the said appointment and to act on it.
>
> In this case, such relationship between [respondents] and Jamora was not sufficiently established by [petitioner].
>
> The testimony of Bato does not convince this court that Jamora was particularly authorized by [respondents] to receive notices from the BIR. At most, Bato only testified on the nature of work of Jamora in the House of Representatives but not his authority to represent [respondents] before the tax authorities.
>
> The documentary evidence presented by [petitioner] likewise fails to establish the authority of Jamora to receive the subject FDDA
>
> These documents do not bear the signature of [respondents] authorizing Jamora to represent [respondents] before the BIR. Moreover, these documents pertain to general mail matters and not to notices issued by the BIR.
>
> Lastly, it bears noting that Jamora has not represented petitioner during the audit investigation for [petitioner] to presume the existence of authority of Jamora to receive the subject FDDA.
>
> Taking the foregoing into consideration, We rule that [petitioner] failed to prove during the preliminary hearing the authority of Jamora to receive the subject FDDA on behalf of [respondents].[389]
>
> ...

Furthermore, petitioner's argument regarding the validity of service through a licensed courier lacks merit. The original provisions of RR No. 12-99[390] did not authorize service by private courier, and it was only through RR No. 18-2013[391] that service by private courier was expressly recognized.[392]

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389 Citations omitted, emphasis, and italics in the original text.

390 Supra at note 45.

391 Amending Certain Sections of Revenue Regulations No. 12-99 Relative to the Due Process Requirement in the Issuance of a Deficiency Tax Assessment.

392 Section 3.1.6 (iii) of Revenue Regulations (**RR**) No. 18-2013 provides: "Service by mail is done by sending a copy of the notice by registered mail to the registered or known address of the party with instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered. A copy of the notice may also be sent through reputable professional courier service. If no registry or reputable professional courier service is available in the locality of the addressee, service may be done by ordinary mail. ..."

Accordingly, the service of the FDDA on respondents' counsel, Atty. Fernandez, on 02 July 2013, was the only valid service; thus, the filing of the Petition for Review[393] on 01 August 2013, was timely.

Lastly, it should be noted that the Supreme Court dismissed petitioner's Second Petition for *Certiorari*[394] after finding that the Court's First Division did not commit any grave abuse of discretion in rendering the 2015 Resolution re: Jurisdiction[395] and 2018 Resolution re: Bond and Jurisdiction.[396] In both of these Resolutions, it was determined that (1) Jamora does not appear to be a duly authorized representative of respondents; (2) service of the FDDA through a private courier is not deemed a valid service thereof under the original provisions of RR No. 12-99; and, (3) the only valid service made to respondents of the subject FDDA is when a copy thereof was given by the BIR's NID to respondents' counsel, Atty. Fernandez, on 02 July 2013.

Clearly, the Court in Division has acquired and is vested with jurisdiction over this case.

THE SUBJECT DEFICIENCY INCOME TAX (IT) ASSESSMENT IS VOID DUE TO A VIOLATION OF RESPONDENTS' RIGHT TO DUE PROCESS.

Petitioner contends that respondents, Spouses Pacquiao, were not deprived of due process during the administrative proceedings. It is argued that respondents received the NIC, as evidenced by their Protest[397] to the FLD[398], which explicitly referenced the informal conference and the alleged discrepancies in the figures presented.

Contrary to petitioner's claim, a thorough examination of the records reveals that petitioner did not formally mark as evidence the NIC dated 18 January 2012.[399] Even assuming *arguendo* that the NIC was presented, the records lack proof of actual receipt by respondents.

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393 Supra at note 37.
394 Supra at note 245.
395 Supra at note 126.
396 Supra at note 225.
397 Exhibit "P-75", supra at note 23.
398 Exhibit "R-19", supra at note 22.
399 BIR Records, Folder 1, p. 31.

Due process requirements in administrative tax assessments are governed by RR No. 12-99[400], specifically Section 3.1.1[401], which mandates that the taxpayer must be informed in writing of any discrepancies and be given the opportunity to explain and present evidence in an informal conference. This requirement ensures that taxpayers can clarify or contest the assessments before a formal demand is issued.

In this case, respondents were deprived of this fundamental right, as the NIC was neither properly served nor clearly established as received. Further, there is no evidence to show that respondents were given an opportunity to participate in an informal conference as required under the cited regulation.

Considering the foregoing, the Court *En Banc* sustains the Special Third Division's finding that petitioner failed to comply with the due process requirements for the issuance of the deficiency tax assessments. As such, the subject assessment issued against respondents is void.

RESPONDENTS, SPOUSES PACQUIAO, WERE NOT DULY INFORMED OF THE BASIS OF THE SUBJECT DEFICIENCY INCOME TAX (IT) ASSESSMENT.

Petitioner contends that the law does not mandate the attachment of source documents to the FLD[402] and argues that stating the facts and the law on which the assessment is based is sufficient. Petitioner maintains that due to respondent EDP's failure to provide requested documents, the assessment was derived from alternative

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400 Supra at note 45.

401 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. (Emphasis supplied)

402 Exhibit "R-19", supra at note 22.

sources, including the boxing purse, pay-*per*-view share, and closed-circuit sales share. Further, petitioner insists that newspaper clippings were not the sole basis, emphasizing that the assessment was supported by an investigation and third-party sources.

As previously held in the assailed Decision[403], the FLD issued to respondents failed to provide sufficient detail regarding how the amounts of gross income were determined. A plain reading of the FLD and the accompanying Details of Discrepancy clearly shows that respondents were not adequately informed of the factual basis for the assessment.

Moreover, the FLD failed to refer to the exhibits, such as news articles and clippings, which were cited by petitioner as part of the basis for the assessment. Respondents were not furnished copies of these documents, further undermining their ability to challenge the assessment effectively.

It is well-established that tax assessments must clearly inform taxpayers of both the factual and legal bases of the assessment to satisfy due process requirements. The Supreme Court has consistently held that the absence of such clarity and specificity in the assessment notice constitutes a violation of the taxpayer's right to due process.

In *Commissioner of Internal Revenue v. Fitness By Design, Inc.*[404], the Court emphasized that Section 228 of the NIRC of 1997, as amended, mandates that taxpayers be informed in writing of the law and facts on which the assessment is made. The Court stated that this requirement is mandatory and cannot be presumed; failure to comply renders the assessment void.

Similarly, in *Commissioner of Internal Revenue v. Liquigaz Philippines Corporation*[405], the Supreme Court reiterated that the taxpayer must be informed of the factual and legal bases of the assessment. The Court held that an FDDA that lacks a detailed

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403 Supra at note 6.
404 G.R. No. 215957, 09 November 2016.
405 G.R. No. 215534, 18 April 2016.

discussion of the facts and law upon which it is based violates the taxpayer's right to due process and is therefore void.

Furthermore, in *Commissioner of Internal Revenue v. Philippine Daily Inquirer, Inc.*[406], the Court annulled the tax assessments for failing to provide the factual and legal bases, underscoring that such omission deprives the taxpayer of the opportunity to intelligently respond or protest, thereby violating due process.

These rulings affirm that the requirement to inform taxpayers of both the factual and legal bases of an assessment is mandatory. A lack of clarity and specificity in the FLD, combined with the absence of source documentation, constitutes a violation of the taxpayer's right to due process, rendering the assessment void. This principle is firmly established in prevailing jurisprudence and cannot be presumed or disregarded.

As previously held, considering that the FLD[407] is silent as regards the factual basis of the assessment and that respondents were not duly informed of the source documents used as basis in computing the assessed deficiency taxes, the subject assessment must be declared void for failure to comply with the due process requirements in the issuance of deficiency tax assessments.

THE SUBJECT DEFICIENCY INCOME TAX (IT) ASSESSMENT LACKS SUFFICIENT BASIS.

Petitioner argues that the deficiency IT assessment issued against respondents is grounded both in fact and law. Petitioner asserts that the assessment relies not merely on hearsay or mainly on news reports but also on actual documents acquired by the BIR.

We disagree.

The fundamental principle of due process in tax assessments requires that the taxpayer be informed not only of the factual and legal

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406 G.R. No. 213943, 22 March 2017.
407 Exhibit "R-19", supra at note 22.

bases but also be given an opportunity to examine the supporting evidence. As established in the assailed Decision[408], the FLD[409] issued to respondents did not sufficiently explain the methodology used to compute the gross income, nor did it reference or provide copies of the exhibits purportedly forming the basis of the assessment.

While petitioner claims that the assessment was not solely based on newspaper clippings, the records reveal that the said clippings were relied upon without independent verification of the reported figures. This practice falls short of the standard required for a valid tax assessment as the Supreme Court has consistently ruled that such sources constitute hearsay evidence and lack probative value unless properly corroborated.

Furthermore, the lack of formal presentation of documents during the administrative proceedings deprived respondents of the opportunity to challenge the accuracy of the figures cited. The requirement for a tax assessment to be factually supported is mandated under existing laws and jurisprudence.

As a "court of record" pursuant to Section 8[410] of RA 1125[411], as amended by RA 9282[412], the CTA is mandated to conduct a formal trial (trial *de novo*). Party litigants must establish every detail of their case and formally offer all their evidence for the Court's consideration. Petitioner's failure to satisfy this evidentiary burden renders the subject assessment invalid.

Accordingly, there being no reversible error, the Court *En Banc* finds no cogent reason or justification to disturb the conclusions reached by the Special Third Division.

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408 Supra at note 6.

409 Exhibit "R-19", supra at note 22.

410 Section 8. *Court of record; seal; proceedings.* — The Court of Tax Appeals shall be a court of record and shall have a seal which shall be judicially noticed. It shall prescribe the form of its writs and other processes. It shall have the power to promulgate rules and regulations for the conduct of the business of the Court, and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law, but such proceedings shall not be governed strictly by technical rules of evidence.

411 AN ACT CREATING THE COURT OF TAX APPEALS.

412 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 OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

WHEREFORE, premises considered, the present Petition for Review filed by petitioner Commissioner of Internal Revenue on 30 March 2023 is hereby **DENIED** for lack of merit. Accordingly, the Special Third Division's Decision dated 29 September 2022 and Resolution dated 17 February 2023, in CTA Case No. 8683 entitled *Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao v. Commissioner of Internal Revenue*, are **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(*With due respect, please see my Dissenting Opinion*)
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

ON LEAVE
HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

SPOUSES EMMANUEL D. PACQUIAO and JINKEE J. PACQUIAO,
Respondents.

CTA *EB* No. 2737
(CTA Case No. 8683)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
JAN 23 2025 3:00 pm

x- -x

DISSENTING OPINION

MANAHAN, *J.*:

I disagree with the *ponencia*'s conclusion that petitioner did not commit forum shopping by filing the present *Petition for Review* despite the pendency of its *Petition for Certiorari* docketed as G.R. No. 242265 with the Supreme Court.

Forum shopping is committed by instituting two or more suits involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other would result in a favorable disposition or increase a party's chances of obtaining a favorable decision. It is an act of malpractice that is prohibited and condemned because it trifles with the courts, abuses their processes, degrades the administration of justice, and adds to congestion of court dockets.[1]

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[1] *Kaimo Condominium Building Corp. v. Leverne Realty & Development Corp.*, G.R. No. 259422, January 23, 2023 [Per J. Singh, Third Division].

In determining whether a party violated the rule against forum shopping, the established test is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another.[2]

The elements of *litis pendentia* are: 1.) the identity of parties; 2.) the identity of rights asserted and reliefs prayed for; and 3.) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other. The elements of *res judicata* are: 1.) the former judgment is final; 2.) the court which rendered judgment had jurisdiction; 3.) the judgment is on the merits; and 4.) between the first and second actions, there is identity of parties, subject matter, and causes of action.[3]

Here, the elements of *litis pendentia* are clearly present.

There is identity of parties

Without doubt, the parties in G.R. No. 242265 are the same parties to the present *Petition for Review*, the former being an offshoot of earlier resolutions rendered by the Court *a quo*. Petitioner in both cases is the Commissioner of Internal Revenue ("**CIR**"). Respondents in both cases are spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao ("**spouses Pacquiao**"), with the Court *a quo* included as public respondent in the G.R. No. 242265. It is already well-settled that absolute identity of the parties is not required, it being enough that there is substantial identity or that they represent the same interests.[4]

There is identity of reliefs prayed for

Below is a comparison between the reliefs prayed for in G.R. No. 242265 and in the present *Petition for Review*:

Petition for *Certiorari* G.R. No. 242265	**Petition for Review CTA EB No. 2737**
WHEREFORE, premises considered, it is most respectfully	**WHEREFORE,** in view of the foregoing, it is respectfully prayed

[2] *Boracay Island Water Company v. Malay Resorts Holdings, Inc.*, G.R. No. 235641, January 17, 2023 [Per J. Zalameda, First Division].
[3] *Dayot v. Shell Chemical Co. (Phils.), Inc.*, G.R. No. 156542, June 26, 2007 [Per Austria-Martinez, Third Division].
[4] *Philippine College of Criminology, Inc., et al. v. Gregory Alan F. Bautista,* G.R. No. 242486, June 10, 2020 [Per J. Leonen, Third Division].

prayed of this Honorable Court that: 1. A Temporary Restraining Order or Writ of Preliminary Injunction be issued ... 2. The instant petition be given due course 3. The resolutions of the public respondent dated January 27, 2015 and July 27, 2018 be reversed and set aside; and 4. An order be issued dismissing the Petition for Review filed by private respondent before the Court of Tax Appeals for lack of jurisdiction.	of the Honorable Court that the instant Petition for Review be given due course and the Decision promulgated on 29 September 2022 and the Resolution promulgated on 17 February 2023 be **REVERSED** and **SET ASIDE**, and a new one be entered **DISMISSING** the original petition before the Court *a quo* for lack of jurisdiction. In the alternative, the assessment of deficiency taxes on taxable years 2008 and 2009 be upheld along with the imposition of surcharges and deficiency and delinquency interest.

Essentially, both petitions pray for the dismissal of the original petition for review filed with the Court *a quo* on the ground of **lack of jurisdiction**. A plain reading of the two petitions further shows that they contain same arguments in support of the same reliefs sought.

In G.R. No. 242265, the CIR anchors its prayer on the theory that the Final Decision on Disputed Assessment ("**FDDA**") was validly served upon spouses Pacquiao through Mr. Edwin Jamora, a receiving clerk, on May 20, 2013. Hence, when spouses Pacquiao filed the original petition for review on August 1, 2013, the 30-day period within which to appeal the FDDA had already lapsed, rendering the deficiency tax assessment final, executory, and demandable, and thereby divesting the Court *a quo* of jurisdiction to entertain the case.

Meanwhile, in its *Petition for Review* with this Court, the CIR discussed at length the supposed authority of Mr. Edwin Jamora to receive the FDDA on behalf of respondents in order to establish that the deficiency tax assessment had already become final, executory, and demandable. It is on the same premise that the CIR assigns error to the Court *a quo*'s ruling that it properly acquired jurisdiction over the case.

The remedies of a petition for *certiorari* and appeal are different and that the purpose of the former is to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction, while the purpose of the latter is to

correct errors of judgment or of fact or law. However, this does not preclude a finding of forum shopping where both actions assert the same rights and seek the same reliefs. In *Mampo v. Morada*,[5] respondent Morada similarly filed a petition for *certiorari* under Rule 65 seeking to annul the decision of the Department of Agrarian Reform Adjudication Board ("DARAB") for having been issued with grave abuse of discretion, then filed a petition for review under Rule 43 seeking that the same DARAB decision be reversed on the ground of errors of facts and law. The Supreme Court found Morada guilty of forum shopping.

There is identity of the two cases such that judgment in one would amount to res judicata in the other

The grave evil sought to be avoided by the rule against forum shopping is the rendition of two separate, contradictory judgments.[6] Such evil is present here since the resolution of both cases primarily depends on whether the Court *a quo* has jurisdiction. Thus, should the Supreme Court finds merit in the CIR's *Petition for Certiorari*, the *ponencia*'s conclusion that the Court *a quo* validly exercised jurisdiction creates two directly conflicting judgments.

The majority takes the view that because the *Petition for Certiorari* challenges only interlocutory orders of the Court, whereas the present *Petition for Review* assails a final judgment on the merits, then there can be no risk of conflicting judgments. It held that "while both petitions seek the dismissal of the original Amended Petition for Review due to lack of jurisdiction, the present Petition for Review specifically aims to reverse and set aside the Special Third Division's assailed Decision and Resolution, both of which addressed not only jurisdictional issues but also the merits of the case." This view overlooks two fundamental things.

First, in a tax assessment case, the issue of receipt of the FDDA is jurisdictional. Hence, the question of whether Mr. Edwin Jamora validly received the FDDA—which was addressed in the merits of the Court *a quo*'s judgment and the

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[5] G.R. No. 214526, November 03, 2020 [Per J. Caguioa, First Division].

[6] *Luzon Iron Development Group Corporation and Consolidated Iron Sands, Ltd. v. Bridestone Mining and Development Corporation and Anaconda Mining and Development Corporation*, G.R. No. 220546, December 07, 2016 [Per J. Mendoza, Second Division].

present *ponencia*—will necessarily have to be resolved as well by the Supreme Court in determining the issue of jurisdiction. This is unlike in *International School, Inc. (Manila) v. Hon. Court of Appeals, et al.*[7] relied upon by the *ponencia*, where the merits of the main case (*i.e.* whether petitioner therein is guilty of negligence) is distinct from the issue raised in the petition for *certiorari* (*i.e.* whether the order granting the motion for execution pending appeal is proper).

Second, a judgment rendered without jurisdiction is a void judgment.[8] Here, the *ponencia* itself noted that both the present *Petition for Review* and the *Petition for Certiorari* before the Supreme Court seeks the dismissal of the original petition for review due to lack of jurisdiction. Consequently, although the subject of the *Petition for Certiorari* is but an interlocutory order of the Court *a quo*, it strikes at the heart of the latter's final judgment *because the interlocutory order hinges on the very Court a quo's jurisdiction to render the final judgment.* Patently, this exposes the *ponencia* to a situation where it affirms a potentially void judgment.

The *ponencia* nonetheless dismisses the possibility of such situation by citing the case of *Irene Villamar-Sandoval v. Jose Cailipan* ("***Villamar-Sandoval***"), *et al.*[9] which held that once judgment on the main case is rendered, any pending petition for *certiorari* challenging interlocutory orders becomes moot.

A case or matter is moot when a supervening event has terminated the legal issue between the parties, such that the court is left with nothing to resolve. When a case or matter becomes moot, it ceases to present a judicial controversy, therefore its adjudication would be of no practical use or value.[10]

There is no question here that the Court *a quo*'s rendition of the assailed final judgment caused any challenge against its interlocutory orders moot. However, while such mootness is a *ground* to dismiss the *Petition for Certiorari*, such dismissal is not automatic.

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[7] G.R. No. 131109, June 29, 1999 [Per J. Gonzaga-Reyes, Third Division].
[8] *Rene H. Imperial and Nidsland Resources Development Corporation v. Hon. Edgar L. Armes, et al.*, G.R. No. 178842, January 30, 2017 [Per J. Jardeleza, Third Division].
[9] G.R. No. 200727, March 4, 2013 [Per J. Perlas-Bernabe, Second Division].
[10] *Express Telecommunications Co., Inc. (Extelcom) v. AZ Communications Inc.*, G.R. No. 196902, July 13, 2020 [Per J. Leonen, Third Division].

This Court has no power to declare a pending case with the Supreme Court moot

Like any other issue of fact or law, mootness must be ascertained, established, and declared by the court before which the case is pending. The case does not magically dissolve by virtue of its subject matter becoming moot; it must be *dismissed* by the court on the ground of mootness. This is the tenor of *Villamar-Sandoval* when it instructed that "an appeal renders a pending petition for certiorari superfluous and *mandates its dismissal.*"[11] There must be affirmative action to dismiss the case; otherwise, it is still a pending case that may expose a party to a violation of the rule against forum-shopping.

Notably, *Villamar-Sandoval* does not touch upon the issue of forum-shopping, unlike the earlier cited case of *Mampo v. Morada*. In *Villamar-Sandoval*, therein respondent challenged an interlocutory order of the trial court declaring him in default by filing a petition for *certiorari* with the Court of Appeals. While main case proceeded on appeal—likewise before the Court of Appeals—a decision on the petition for *certiorari* was rendered. It is in this context that the Supreme Court ruled that the petition should have been *withdrawn* by therein respondent or *dismissed* by the Court of Appeals where it was pending.

In the present case, however, the Petition for *Certiorari* was filed not with this Court but with the Supreme Court. Hence, it is the Supreme Court which has the power to dismiss the same on the ground of mootness, if found proper.

The Court, however, cannot preempt the Supreme Court's action nor presume the dismissal of the subject Petition for *Certiorari*. This is because while the general rule is that cases which are moot shall be dismissed, such rule admits of well-established exceptions. Jurisprudence is replete with cases which are moot and academic, yet still subjected to judicial review.[12] *Kilusang Mayo Uno v. Aquino* laid down the following guidelines:

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[11] *Emphasis supplied.*

[12] *Sanlakas v. Reyes*, G.R. No. 159085, February 03, 2004 [Per J. Tinga, *En Banc*], *Pimentel v. Ermita*, G.R. No. 164978, October 13, 2005 [Per J. Carpio, *En Banc*], *Kilusang Mayo Uno v. Aquino*, G.R. No. 210500, April 02, 2019 [Per J. Leonen, En Banc].

> Courts will decide cases, otherwise moot and academic, if: *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and *fourth*, the case is capable of repetition yet evading review.
>
> The third exception is corollary to this Court's power under Article VIII, Section 5(5) of the 1987 Constitution. This Court has the power to promulgate rules and procedures for the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts. It applies where there is a clear need to clarify principles and processes for the protection of rights.
>
> As for the rest of the exceptions, however, all three (3) circumstances must be present before this Court may rule on a moot issue. There must be an issue raising a grave violation of the Constitution, involving an exceptional situation of paramount public interest that is capable of repetition yet evading review.[13]

Again, it is not for this Court to determine and decide whether the above circumstances exist in and warrant the resolution of the Petition for *Certiorari* docketed as G.R. No. 242265 with the Supreme Court.

In any case, whether the subject Petition for *Certiorari* is dismissed or given due course, forum shopping was already consummated. The act of forum shopping is committed by instituting the two suits, regardless of their outcomes. A party who commits forum shopping is not absolved thereof by subsequent events, such as the amendment of the complaint,[14] or the withdrawal or dismissal of the petition.[15]

Petitioner should have complied with Rule 7, Section 5 or withdrawn its Petition for Certiorari to avoid violation

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[13] *Citations omitted.*
[14] RULES OF COURT, Rule 7, Sec. 5; *Public Interest Center, Inc., et al. v. Roxas*, G.R. No. 125509, Jan. 31, 2007 [Per J. Carpio Morales, Second Division].
[15] *See Top Rate Construction & General Services, Inc. v. Paxton Development Corporation*, G.R. No. 151081, Sep. 11, 2003 (Resolution) [Per J. Bellosillo, Second Division].

of the rule against forum shopping

This dissent does not in any way imply that petitioner should not have filed its *Petition for Review* with this Court. It is acknowledged that petitioner was constrained to file the present appeal, otherwise the Court *a quo*'s judgment would become final and executory. However, this does not mean that petitioner also had no choice but to commit forum shopping.

First, good faith dictates that petitioner should have ***declared the pendency*** of his Petition for *Certiorari*, with a complete statement of its status, in compliance with Rule 7, Section 5 of the Rules of Court. Petitioner failed to do so. Instead of making such declaration when he filed the present *Petition for Review*, petitioner executed a suspicious *Verification and Certification of Non-Forum Shopping* dated March 29, 2023,[16] which glaringly omits the Supreme Court. Petitioner certified therein as follows:

> 6. I certify that I have not commenced any other action or proceeding involving the same issue before ***this Honorable Court, or any Division thereof, the Court of Appeals or any Division thereof, the Regional Trial Court or any tribunal or agency.*** To the best of my knowledge, no such action or proceeding has been filed or is pending before ***this Honorable Court, the Court of Appeals or any tribunal or agency.*** Should I learn that a similar action or proceeding has been filed or is pending before this Honorable Court or any tribunal or agency, I will notify this Honorable Court within five (5) calendar days from such notice.[17]

Second, prudence dictates that petitioner should have ***withdrawn*** his Petition for *Certiorari* with the Supreme Court. Interestingly, petitioner filed with the Supreme Court a *Manifestation and Motion (In Lieu of Comment)*[18] seeking the dismissal of *respondent's* petitions for *certiorari* on the ground of mootness, but not of his own. On this score, the Supreme Court's ruling in *Pilipino Telephone Corporation v. Radiomarine Network, Inc.*[19] is highly instructive and applicable:

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[16] *En Banc* Docket, p. 42.
[17] *Emphasis supplied.*
[18] *En Banc* Docket, pp. 192-197.
[19] G.R. No. 152092, August 4, 2010 [Per J. Leonardo-de Castro, First Division].

> Petitioner stresses that **when it filed its petition for *certiorari*... the remedy of appeal was not yet an available option to it** as the case in the trial court had yet to be concluded. **However, upon the issuance of the April 23, 2001 Order ... appeal was now open to petitioner which it readily pursued.** Since the issues raised and the reliefs sought in its petition for *certiorari* and its appeal are identical which would make a decision in either one as *res judicata* on the other and given that it is axiomatic that the availability of appeal precludes resort to *certiorari*, **it was imperative on the part of petitioner to withdraw its petition for *certiorari* which it did not do. This is where the petitioner crossed the line into the forbidden recesses of forum shopping.**[20]

In view of the foregoing, I **VOTE** to **DISMISS** the *Petition for Review* on the ground of forum shopping.

CATHERINE T. MANAHAN
Associate Justice

[20] Emphasis supplied.