

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AGM VENTURES
ENTERPRISES, INC.,

CTA EB No. 2829
(CTA Case No. 11144)

Petitioner,

Present:

-versus-

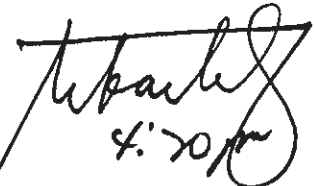
BUREAU OF INTERNAL
REVENUE, represented by
the COMMISSIONER OF
INTERNAL REVENUE,

Respondent.

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

Promulgated:

APR 24 2025


4:20 pm

x-----x

DECISION

REYES-FAJARDO, J.:

The Petition for Review dated November 19, 2023,¹ filed by AGM Ventures Enterprises, Inc. seeks to overturn the Resolutions dated June 22, 2023² and October 9, 2023³ in CTA Case No. 11144, whereby the Court of Tax Appeals – Second Division (Court in Division) dismissed said case, for lack of jurisdiction.

¹ Rollo, pp. 1-11.

² Id. at pp. 26-31.

³ Id. at pp. 15-19.

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The antecedents⁴ follow.

On May 31, 2022, petitioner received⁵ the Final Decision on Disputed Assessment (FDDA)⁶ dated May 23, 2022, issued by Regional Director Greg M. Buhain (RD Buhain) of the Bureau of Internal Revenue - Revenue Region No.9B-LaQueMar, San Pablo City (BIR-RR9B).

On June 30, 2022, petitioner filed a Request for Reconsideration⁷ before the Commissioner of Internal Revenue (CIR), impugning RD Buhain's FDDA dated May 23, 2022. The CIR has yet to address said Request for Reconsideration.

On March 10, 2023, petitioner received BIR-RR9B's Warrant of Garnishment (WOG)⁸ and Warrant of Dstraint and/or Levy (WDL),⁹ both issued on March 6, 2023.

On March 14, 2023, petitioner filed a Request to Lift WDL and WOG before BIR-RR9B.¹⁰

On April 28, 2023, petitioner filed a Petition for Review on Certiorari with TRO and Injunction,¹¹ docketed as CTA Case No. 11144.

Through Resolution dated June 22, 2023,¹² CTA Case No. 11144 was dismissed in the following fashion:

⁴ Per petitioner's allegations in the Petition in CTA Case No. 11144 and accompanying annexes.

⁵ See Annex "C" of the Petition in CTA Case No. 11144. Docket (CTA Case No. 11144), pp. 34-43.

⁶ Annex "B" of the Petition in CTA Case No. 11144. *Id.* at pp. 28-33. Relate with par. 3 of said Petition.

⁷ Annex "C" of the Petition in CTA Case No. 11144. *Id.* at pp. 34-43. Relate with par. 4 of said Petition.

⁸ Annex "D" of the Petition in CTA Case No. 11144. *Id.* at p. 182. Relate with par. 5 of said Petition.

⁹ Annex "E" of the Petition in CTA Case No. 11144. *Id.* at p. 183. Relate with par. 5 of said Petition.

¹⁰ Annex "F" of the Petition in CTA Case No. 11144. *Id.* at pp. 184-185. Relate with par. 5.1 of said Petition.

¹¹ *Id.* at pp. 6-14.

¹² *Supra* note 2.



WHEREFORE, the instant Petition for Review, docketed as CTA Case No. 11144 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

On July 12, 2023, petitioner filed a Motion for Reconsideration,¹³ challenging the Resolution dated June 22, 2023. In the Resolution dated October 9, 2023,¹⁴ said motion was denied as follows:

WHEREFORE, petitioner's Motion for Reconsideration, filed on 12 July 2023, is hereby **DENIED**. The assailed Resolution, dated 22 June 2023, is hereby **AFFIRMED**.

SO ORDERED.

On November 20, 2023, petitioner filed its Petition for Review,¹⁵ docketed as CTA EB No. 2829. It complains that BIR-RR9B's issuance of the WDL and WOG is illegal because the CIR has yet to address its pending administrative appeal, invoking *Light Rail Transit Authority v. Bureau of Internal Revenue*¹⁶ in support thereof.

On March 25, 2024, respondent filed its Comment/Opposition (Re: Petitioner's Petition for Review dated 19 November 2023),¹⁷ mainly insisting that the CTA in Division aptly dismissed CTA Case No. 11144 for lack of jurisdiction.

By Resolution dated April 24, 2024, CTA EB No. 2829 was submitted for decision.¹⁸

RULING

The Petition fails to impress.

¹³ *Rollo*, pp. 20-31.

¹⁴ *Supra* note 3.

¹⁵ *Supra* note 1.

¹⁶ G.R. No. 231238, June 20, 2022.

¹⁷ *Rollo*, pp. 46-53.

¹⁸ *Id.* at p. 56.

Section 7(a)(1) of Republic Act (RA) No. 1125,¹⁹ as amended by RA No. 9282, endows the CTA with jurisdiction over the CIR's or his duly authorized representative's decisions or actions over other matters arising from the NIRC, as amended:

Sec. 7. Jurisdiction. - The CTA shall exercise:

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

1. **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

...²⁰

Section 3(a)(1), Rule 4 of the Revised Rules of the Court of Tax Appeals²¹ clarified that the CTA *in Division* has jurisdiction over the CIR's or his authorized representative's decision or action involving other matters arising from the NIRC, as amended, *inter alia*. One of the matters set forth in Section 2 of the same Code is the BIR's authority to collect all national internal revenue taxes, fees, and charges.²² Among the means by which internal revenue taxes may be collected by the BIR are by way of distraint and/or levy of property, and garnishment of bank accounts, recognized in Section 205(a),²³ in relation to Sections 207²⁴ and 208²⁵ of the NIRC, as amended.

¹⁹ An Act Creating the Court of Tax Appeals.

²⁰ Boldfacing supplied.

²¹ A.M. No. 05-11-07-CTA.

²² **SEC. 2. Powers and Duties of the Bureau of Internal Revenue.** - The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts.... (Boldfacing supplied)

²³ **Section 205. Remedies for the Collection of Delinquent Taxes.** - The civil remedies for the collection of internal revenue taxes, fees or charges, and any increment thereto resulting from delinquency shall be:

(a) By distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts and interest in and rights to personal property, and by levy upon real property and interest in rights to real property; ...

²⁴ **Section 207. Summary Remedies.** -

Here, petitioner filed an administrative appeal before the CIR,²⁶ assailing RD Buhain's FDDA dated May 23, 2022.²⁷ Pending resolution of its administrative appeal, petitioner received BIR-RR9B's WDL and WOG on March 10, 2023,²⁸ which was challenged by petitioner through its Petition filed²⁹ on April 28, 2023.

Petitioner's constant gripe in BIR-RR9B's WDL and WOG is that the issuance thereof is premature and illicit because collection of taxes was enforced on it, even though the CIR has yet to rule on its administrative appeal and finally determine the taxes due to it.

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

...

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

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

...

²⁵ *Section 208. Procedure for Dstraint and Garnishment.* - The officer serving the warrant of dstraint shall make or cause to be made an account of the goods, chattels, effects or other personal property dstrained, a copy of which, signed by himself, shall be left either with the owner or person from whose possession such goods, chattels, or effects or other personal property were taken, or at the dwelling or place of business of such person and with someone of suitable age and discretion, to which list shall be added a statement of the sum demanded and note of the time and place of sale.

...

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

²⁶ *Supra* note 7.

²⁷ *Supra* note 6.

²⁸ *Supra* notes 8 and 9.

²⁹ *Supra* note 11.

Without doubt, the incident which prompted petitioner to seek redress before the Court in Division is BIR-RR9B's issuance of the WDL and WOG against it, covered by "other matters arising from the NIRC." Jurisprudence made it clear that these collection measures may be challenged *via* an *appeal* before the CTA in Division.

In *Commissioner of Internal Revenue v. Bank of the Philippine Islands (BPI)*,³⁰ therein respondent received a WDL from the BIR on November 4, 2011. Respondent challenged said WDL through a *Petition for Review* before the CTA, "asking the tax court to suspend the collection of the alleged deficiency taxes, cancel the November 2011 Warrant, and enjoin the CIR from further implementing it. It also prayed for the CTA to declare the assessments as prescribed and to cancel the assessments related thereto." BPI held that the CTA properly exercised jurisdiction over therein respondent's *Petition for Review*, the corresponding rationalization of which, is quoted for reference:

The CTA properly exercised its jurisdiction over BPI's petition for review.

The OSG relies heavily on the letter dated February 5, 1992 — that it was a "final decision denying Citytrust's protest. Citytrust's failure to appeal the "final decision" within 30 days from receipt thereof rendered the tax assessment final, executory, and unappealable. Thus, BPI's Second CTA petition in 2011 was filed out of time, over which the court below did not acquire jurisdiction.

...

Second, the aforementioned letter is irrelevant in ascertaining whether or not the tax court properly took cognizance of BPI's Second CTA Petition. As the CTA correctly pointed out, BPI did not come to question any final decision issued in connection with Citytrust's assessments. They went before the CTA primarily to assail the November 2011 Warrant's issuance and implementation. To be sure, the issue for the CTA to resolve was the propriety not of any assessment but of a tax collection measure implemented against BPI. Accordingly, the CTA's disposition was distinctly for the cancellation of the warrant and nothing else.

³⁰ G.R. No. 227049, September 16, 2020.

The law expressly vests the CTA the authority to take cognizance of "other matters" arising from the 1977 Tax Code and other laws administered by the BIR which necessarily includes rules, regulations, and measures on the collection of tax. Tax collection is part and parcel of the CIR's power to make assessments and prescribe additional requirements for tax administration and enforcement.

Thus, the CTA properly exercised jurisdiction over BPI's Second Petition.³¹

Prescinding from *BPI*, the WDL and WOG issued by BIR-RR9B against petitioner are proper subjects of an *appeal* before the CTA in Division. Section 11 of RA No. 1125, as amended by RA No. 9282, spells out the period and mode by which appeal is taken before the CTA in Division:

SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. - Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, ... **may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling** or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal:

Petitioner received³² BIR-RR9B's WDL and WOG on March 10, 2023. Counting 30 days therefrom, it had until April 10, 2023³³ to appeal with the CTA in Division. *Ergo*, the *belated* filing of petitioner's Petition in CTA Case No. 11144 on April 28, 2023,³⁴ divested the Court in Division of authority to entertain CTA Case No. 11144. As a result, no reversible error was committed in dismissing said case for lack of jurisdiction.

³¹ Boldfacing ours.

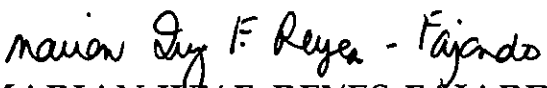
³² *Supra* notes 8 and 9.

³³ The 30th day, *i.e.*, April 9, 2023, fell on a Sunday and Holiday (Araw ng Kagitingan).


³⁴ *Supra* note 11.


WHEREFORE, the Petition for Review dated November 19, 2023, filed by AGM Ventures Enterprises, Inc. in CTA EB No. 2829 is **DENIED**, for lack of merit. The Resolutions dated June 22, 2023 and October 9, 2023, both issued by the Court of Tax Appeals – Second Division in CTA Case No. 11144, are **AFFIRMED**.


SO ORDERED.



MARIAN IVY F. REYES-FAJARDO
Associate Justice

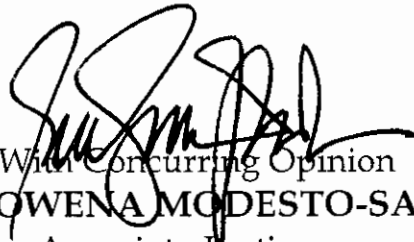
WE CONCUR:


With due respect, see Dissenting Opinion
ROMAN G. DEL ROSARIO
Presiding Justice


I join the Concurring Opinion of J. San Pedro
MA. BELEN M. RINGPIS-LIBAN
Associate Justice


With due respect, see Dissenting Opinion
CATHERINE T. MANAHAN
Associate Justice

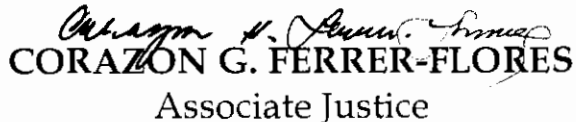

I join the Dissenting Opinion of PJ Del Rosario
JEAN MARIE A. BACORRO-VILLENA
Associate Justice



With Concurring Opinion
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



With due respect, I join PJ Del Rosario's/J. Manahan Dissenting Opinions
LANEE S. CUI-DAVID
Associate Justice



CORAZON G. FERRER-FLORES
Associate Justice



HENRY S. ANGELES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the 1987 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

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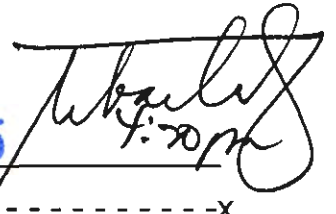
**DEL ROSARIO, P.J.,
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MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.**

**BUREAU OF INTERNAL
REVENUE, represented by the
COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

APR 24 2025



x- - - - -x

DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I am constrained to withhold my assent on the *ponencia*.

I submit that petitioner AGM Ventures Enterprises, Inc.'s Petition for Review should be granted.

The relevant facts of the case are as follows:

May 31, 2022 - petitioner received respondent's Final Decision on Disputed Assessment (FDDA) dated May 23 2022.



DISSENTING OPINION

CTA EB No. 2829 (CTA Case No. 11144)

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June 30, 2022 - the Bureau of Internal Revenue (BIR) received petitioner's request for reconsideration of the FDDA.

July 6, 2022 - the Office of the Regional Director, Revenue Region 9B, LaQueMar, San Pablo City, received petitioner's request for reconsideration of the FDDA.

March 6, 2023 - Warrant of Garnishment (WOG) and Warrant of Dstraint and/or Levy (WDL) were issued against petitioner and received by the latter on March 10, 2023.

March 14, 2023 - petitioner filed a Request to Lift the Warrant of Dstraint/Levy and Warrant of Garnishments ("Request to Lift"), dated March 13, 2023, with the Office of the Regional Director, Revenue Region 9B, LaQueMar, San Pablo City.

April 28, 2023 - petitioner filed a Petition for Certiorari with TRO and Injunction before the Court of Tax Appeals (CTA), praying, among others, for the issuance of a Temporary Restraining Order (TRO) and injunction to stop the garnishment, dstraint and/or levy of the properties of petitioner.

The CTA in Division dismissed the Petition for Review for being prematurely filed. In a nutshell, the CTA in Division held that there was no final decision rendered by the Commissioner of Internal Revenue (CIR) on petitioner's request for reconsideration of the FDDA that is appealable to the CTA. Moreover, the 180+30-day period within which to appeal any inaction of the CIR had already lapsed.

A perusal of the Petition for Review filed before the CTA in Division reveals that petitioner was prompted to seek redress before the CTA after the BIR issued the WOG and WDL, *sans* any final decision by the CIR on its request for reconsideration of the FDDA.

Considering that the 180+30-day period to appeal an inaction of the CIR had already lapsed, and that there was no final decision by the CIR's on petitioner's request for reconsideration that is appealable to the CTA, it appears that the CTA has no jurisdiction over the Petition for Review, filed under Rule 42 of the Rules of Court in relation to Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, to assail the prematurely issued WOG and WDL.



DISSENTING OPINION

CTA EB No. 2829 (CTA Case No. 11144)

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What is the remedy available to petitioner to assail the prematurely issued WOG and WDL?

To my mind, the correct remedy to assail the prematurely issued WOG and WDL was by way of a Petition for Certiorari under Rule 65 of the Rules of Court.

First, the WOG and WDL, which were issued prior to the issuance by the CIR of his final decision on petitioner's request for reconsideration, are in the nature of interlocutory orders of the BIR which are proper subject of a Petition for Certiorari under Rule 65 of the Rules of Court.

Second, based on the allegations in the Petition for Review, petitioner is questioning the act of the BIR in prematurely issuing the WOG and WDL while petitioner's request for reconsideration of the FDDA is still pending with the CIR.

Third, petitioner has no other plain, speedy and adequate remedy in the ordinary course of law to assail the prematurely issued WOG and WDL. Petitioner is constrained to seek relief from the CTA against the BIR's collection attempts, specially since there was yet no final decision from the CIR upholding the assessments contained in the FDDA; and, there is nothing in the issuances of the BIR which provides for an adequate remedy that petitioner may avail to question a WOG or WDL issued during the pendency of an appeal or request for reconsideration before the CIR.

The next question is whether or not the CTA in Division has basis to treat the Petition for Review filed under Rule 42 of the Rules of Court as Petition for Certiorari under Rule 65 of the Rules of Court.

The Petition for Review filed before the Court in Division may be treated as a Petition for Certiorari.

While an ordinary appeal or petition for review and a petition for *certiorari* are distinct legal remedies with different requirements and purposes, a petition for review may be treated as a petition for *certiorari* if it appears from an examination of the allegations and the relief sought therein that it is a petition for *certiorari*.¹

¹ Elmer S. Miguel, *et al.* vs. Bureau of Internal Revenue, CTA Case No. 10415, October 16, 2023; *Opal Portfolio Investments [FISTC-AMC (Asset Management Company)], Inc. Formerly Opal Portfolio Investments (SPV-AMC), Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 11187, September 28, 2023.



DISSENTING OPINION

CTA EB No. 2829 (CTA Case No. 11144)

Page 4 of 4

In *Golden Donuts, Inc. vs. Commissioner of Internal Revenue*,² instead of filing a petition for certiorari under Rule 65 of the Rules of Court before the CTA to question the interlocutory orders of the BIR, Golden Donuts, Inc. (GDI) filed a petition for review under Rule 42 of the Rules of Court. Nevertheless, the Supreme Court, in the interest of substantial justice and after noting that the petition was filed within the 60-day reglementary period to file a petition for certiorari, treated the petition for review filed before the CTA in Division as petition for certiorari. The Supreme Court remanded the case to the CTA in Division for resolution and for determination of whether there was grave abuse of discretion amounting to lack or excess of jurisdiction committed by the BIR. The CTA was enjoined by the Supreme Court to treat the petition for review filed by GDI as petition for certiorari.

In the present case, records reveal that petitioner received the WOG and WDL on March 10, 2023. Petitioner filed the Petition for Review on *Certiorari* with TRO and Injunction with the CTA in Division on April 28, 2023. Clearly, the petition was filed before the CTA in Division within the 60-day period to file a petition for certiorari. Applying the ruling in *Golden Donuts, Inc.*, the CTA in Division has jurisdiction over the Petition for Review (treated as a Petition for Certiorari). Thus, it should have proceeded to determine whether or not the WOG and WDL were issued by the BIR with grave abuse of discretion.

All told, I VOTE to: (i) grant AGM Ventures Enterprises, Inc.'s Petition for Review (assailing the June 22, 2023 Resolution and October 9, 2023 Resolution of the CTA in Division); and, (ii) remand the case to the CTA in Division with directive to treat the same as a Petition for Certiorari, and determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction committed by the BIR in issuing the WOG and WDL.


ROMAN G. DEL ROSARIO
Presiding Justice

² G.R. No. 252816, February 3, 2021.

REPUBLIC OF THE PHILIPPINES
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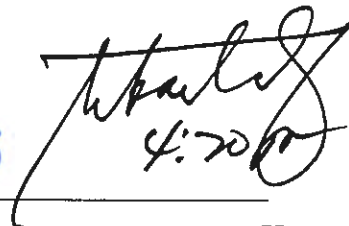
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CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.

BUREAU OF INTERNAL
REVENUE, represented by
the COMMISSIONER OF
INTERNAL REVENUE,

Respondent.

Promulgated:

APR 24 2025



X - - - - -X

DISSENTING OPINION

MANAHAN, J.:

With due respect, I proffer a contrary view regarding the conclusion reached in the *ponencia* that the Petition for Review before the Court in Division was filed out of time. Hence, the Court of Tax Appeals (CTA) has no jurisdiction over the case.

In this regard, the CTA in Division found that the Petition was filed before receipt of the final decision on petitioner's protest by the Commissioner of Internal Revenue (CIR). As such, no decision was appealable to the Court. The Court also found that petitioner is barred from appealing the CIR's inaction because it filed the Petition only on April 28, 2023, or 92 days after the lapse of the 180+30-day period. *an*

Section 7(a)(1) of Republic Act (RA) No. 1125, as amended by RA No. 9282, provides:

“Section 7. Jurisdiction. — The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.

(1) **Decisions** of the Collector of Internal Revenue in cases **involving** disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or **other matters** arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue.” (*Emphasis supplied*)


Under the above-quoted provision, the CTA has exclusive appellate jurisdiction over decisions involving *other matters* arising under the 1997 National Internal Revenue Code (NIRC), as amended, or other law or part of law administered by the BIR, among others.

Here, petitioner is questioning the propriety of the issuance of the Warrant of Dstraint and/or Levy (WDL) which was issued without the CIR’s action on its administrative protest. As such, the Court in Division correctly ruled that there is no decision appealable to the Court.

Since a WDL was nevertheless issued by the CIR despite his inaction on the protest, what then is the available remedy for petitioner if appeal is unavailable?

The subject WDL may be treated as an interlocutory order. “An interlocutory order is one that does not dispose of the case completely but leaves something to be decided upon.”¹ As stated earlier, the subject WDL was issued pending the CIR’s decision on petitioner’s protest. Hence, said WDL clearly constitutes an order that does not dispose of the case completely, but leaves something to be decided upon, *i.e.*, pending protest before the CIR.

Meanwhile, the Supreme Court has ruled that the remedy against an interlocutory order is a special civil action for *certiorari* under Rule 65 of the Revised Rules of Court

¹ *Integrated Credit and Corporate Services, Co. v. Novelita Labrador and Philipians Academy of Parañaque City*, G.R. No. 233127, July 10, 2023. 

(RROC), if attended with grave abuse of discretion and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.²

On this score, while Section 7(a)(1) of RA No. 1125, as amended by RA No. 9282, refer only to the appellate jurisdiction of the CTA, jurisprudence affirms that the latter “carries with it the power to issue a writ of *certiorari* when necessary *in aid of such appellate jurisdiction*.”³ In this regard, the case of *The City of Manila v. Hon. Caridad H. Grecia-Cuerdo* is instructive:

“A grant of appellate jurisdiction implies that there is included in it the power necessary to exercise it effectively, to make all orders that will preserve the subject of the action, and to give effect to the final determination of the appeal. It carries with it the power to protect that jurisdiction and to make the decisions of the court thereunder effective. ***The court, in aid of its appellate jurisdiction, has authority to control all auxiliary and incidental matters necessary to the efficient and proper exercise of that jurisdiction.*** For this purpose, it may, when necessary, prohibit or restrain the performance of any act which might interfere with the proper exercise of its rightful jurisdiction in cases pending before it.

XXX

XXX

XXX


XXX Hence, ***demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter,*** even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.

Based on the foregoing disquisitions, it can be reasonably concluded that ***the authority of the CTA to take cognizance of petitions for certiorari questioning interlocutory orders issued by the RTC in a local tax case is included in the powers granted by the Constitution as well as inherent in the exercise of its appellate jurisdiction.***⁴

Considering that the Court has *appellate* jurisdiction over “decisions” on tax assessments and other matters arising under tax laws, it follows that the Court has *certiorari* power

² *Id.*

³ *The City of Manila v. Hon. Caridad H. Grecia-Cuerdo*, G.R. No. 175723, February 04, 2014 [Per J. Peralta, En Banc].

⁴ *Id.*, Citations omitted, *Emphasis supplied.* 

over all other matters ancillary and incidental thereto, such as the summary collection of the taxes which are the subject of the assessment.”

Records reveal that instead of filing a special civil action for *certiorari* under Rule 65, petitioner availed of a wrong remedy by filing a Petition for Review. This situation was addressed by the Supreme Court in the case of *Golden Donuts, Inc. v. Commissioner of Internal Revenue*,⁵ where the appeal was treated as a petition for *certiorari*, as follows:

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

As such, while petitioner wrongfully elevated this case to the Court by way of appeal, the instant Petition may be treated as a special civil action for *certiorari* following the pronouncement of the Supreme Court in *Golden Donuts*. Therefore, the Court may take cognizance of the instant case.


Considering that the Petition for Review filed before the Court in Division may be properly treated as a Petition for *Certiorari* under Rule 65, said Petition is timely filed under Section 4, Rule 65 of the RROC. It pertinently provides:

“**SEC. 4. When and where to file the petition.** – The petition shall be filed **not later than sixty (60) days from notice of the judgment, order or resolution.** In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.

xxx

xxx

xxx” (Emphasis supplied)

⁵ G.R. No. 252816, February 3, 2021. 


DISSENTING OPINION

CTA EB No. 2829

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Records show that petitioner received the WDL on March 10, 2023⁶ through a certain Hediliza M. Dangoy. Applying the above-quoted rule, petitioner had 60 days, or until May 9, 2023, within which to file the Petition. Considering that petitioner filed the Petition on April 28, 2023, the same was timely filed.

For these reasons, I **VOTE** to: (1) **GRANT** the instant Petition for Review; and (2) **REMAND** the case to the CTA in Division to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the WDL dated March 6, 2023.


CATHERINE T. MANAHAN
Associate Justice

⁶ Annexes "D" and "E", Division Docket, pp. 182-183.

En Banc

Present:

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

Promulgated:

Respondent.

APR 24 2025

X ----- X

MODESTO-SAN PEDRO, J.:

With due respect, however, I disagree with the Dissenting Opinion of Presiding Justice Roman G. Del Rosario, which argues that petitioner's Petition for Review before the Court in Division should have been treated as a Petition for Certiorari under *Rule 65 of the Rules of Court* and determined whether respondent issued the Warrant of Garnishment ("WOG") and Warrant of Distrain and/or Levy ("WDL") with grave abuse of discretion. From a review of the Petition, I believe that it was filed to assail the *assessment* against petitioner, not protest any grave abuse resulting from the collection efforts of respondent.

First, the Petition for Review is meant to protest the alleged *inaction* of the Commissioner of Internal Revenue (“CIR”) regarding petitioner’s *protest to the assessment against it*. Paragraph 7 and its sub-paragraphs, which make up the bulk of its jurisdictional allegations and thus of its “Discussion” section, are devoted to explaining that a taxpayer may elevate a *protest against an assessment* when the CIR fails to act on the same. Unless the Court completely ignores *petitioner’s own arguments*, this discussion should obviously be applied to the case at bar as representative of petitioner’s own position. In other words, petitioner clearly sees its case as a *continuation of its protest against the assessment*, grounded on respondent’s alleged *inaction on said protest against the assessment*.

It must be emphasized that petitioner does *not* mention the WOG or the WDL in its jurisdictional allegations. It is laser-focused on the alleged inaction of respondent on its *protest to the assessment*. As such, and to reiterate, its Petition for Review was primarily intended to *assail the disputed assessment*.

Second, petitioner itself treated its prayer on the WOG and WDL as *separate* from the main Petition. Recall that the full title of its Petition before the Court in Division was “Petition for Review on Certiorari with TRO and Injunction.” From the title alone, its prayer for a Temporary Restraining Order (“TRO”) and injunction is treated as being “with”, *i.e.* as accompanying *but distinct* from, its main Petition. Further, its arguments against the WOG and WDL were included in a stand-alone section titled “Allegations in Support of Prayer for Writ of TRO and Preliminary Injunction,”¹ a section separate from its main “Discussion” section.

Thus, while the WOG and WDL are the targets of petitioner’s prayer for the suspension of tax collection, they are *not* the basis of the Petition for Review itself. Rather, as discussed above, the Petition for Review is meant to assail the *assessment* against petitioner.

As pointed out in the Dissenting Opinion itself, “a petition for review may be treated as a petition for *certiorari* if it appears from an examination of the allegations and the relief sought therein that it is a petition for *certiorari*.” Drawing from this, if a Petition’s allegations and reliefs sought show that it is *not* a Petition for Certiorari, then the Court should not treat it as one.

The case of *Golden Donuts, Inc. v. Commissioner of Internal Revenue*² (“*Golden Donuts*”) is inapplicable here. In that case, the taxpayer sought to invalidate a Letter of Authority and a subpoena *duces tecum* and to terminate an investigation performed by the Bureau of Internal Revenue. Its Petition

¹ Petition for Review, pp. 8, Division Records, p. 13.

² G.R. No. 252816, February 3, 2021.

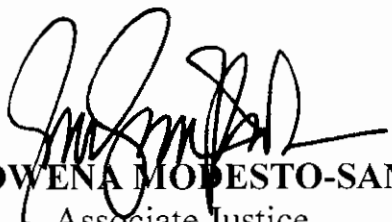
was *not* raised to assail an alleged *inaction on a disputed protest*. This case, on the other hand, was initiated precisely to assail such an alleged inaction, *by petitioner's own words and arguments*. As such, and to reiterate, taking jurisdiction over this case would not involve closely reading a Petition's contents to determine that it is a Petition for Certiorari, as in *Golden Donuts*. It would instead involve the exact opposite: *completely ignoring the contents of the Petition* and the taxpayer's own arguments to insist, *contra the litigant*, that said Petition is *not* meant as a judicial protest against an assessment.

Put another way, *Golden Donuts* clarifies that this Court has jurisdiction over Petitions for Certiorari that, by definition, involve grave abuses of discretion. It does *not* require this Court to *ignore fatal procedural defects* and *the arguments and prayers of litigants themselves* in cases involving issues clearly under the domain of regular Petitions for Review. The instant case involves the latter. Consequently, *Golden Donuts* is inapplicable.

To clarify, I firmly believe that this Court *can* take cognizance of a Petition protesting any grave abuse of discretion in the issuance of WDLs and WOGs. I do *not* believe the Court should allow taxpayers to abuse such jurisdiction to assail *assessments* which they otherwise could not. Such jurisdiction should *not* be used in conjunction with the issuance of a WDL or WOG to *belatedly* assail an assessment, thereby side-stepping the prescriptive period for filing judicial protests. Such jurisdiction should *not* be used in conjunction with the issuance of a WDL or WOG to *prematurely* assail an assessment, thereby side-stepping the CIR's power, granted by law, to decide on disputed assessments.

Applied here, to take cognizance of petitioner's case, one which was caused by the CIR's alleged *inaction on a disputed assessment* and which *explicitly prays for the modification of said assessment*,³ would be to allow such an abuse of this Court's jurisdiction over Petitions for Certiorari to practically negate the 180+30-day prescriptive period and rob the CIR of his power to decide on disputed assessments.

Accordingly, and considering that the Petition for Review filed before the Court *En Banc* merely rehashes arguments raised below, I support Associate Justice Reyes-Fajardo's ruling and vote to **DENY** the instant Petition for Review.


MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

³ Petition for Review, p. 8, *id.* at 13.