

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. NIPPON EXPRESS PHILIPPINES CORPORATION, AND THE COURT OF TAX APPEALS THIRD DIVISION, RESPONDENTS.

G.R. No. 280580, April 16, 2026

Ponente: INTING, J.

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INTING, J.:

Before the Court is a Petition for Certiorari and Prohibition[1] under Rule 65 of the Rules of Court assailing the Court of Tax Appeals (CTA) Third Division (CTA Division) Resolutions dated September 27, 2024[2] and April 8, 2025[3] in CTA Case No. 11294, which ordered for the suspension of the collection of alleged deficiency taxes from respondent Nippon Express Philippines Corporation (Nippon), relative to calendar year 2016.

The dispositive of the first assailed resolution is as follows.

ACCORDINGLY, we RESOLVE to:

- GRANT petitioner's Urgent Application for a Writ of Preliminary Prohibitory Injunction and Urgent Motion for the Issuance of Temporary Suspension Order and/or Temporary Restraining Order and Motion to Lift the Warrant of Garnishment embodied in the Petition for Review;
- LIFT the Bureau of Internal Revenue's Warrant of Dstraint and/or Levy (Warrant No. 125-2023-102) dated October 15, 2023, as well as the Warrant of Garnishment (Warrant No. 125-2023-102) dated October 18, 2023, both issued against petitioner; and
- DISPENSE with the posting of bond, as precondition for the allowance of suspension order prayed for by petitioner.

SO ORDERED.[4]

The present controversy stems from the Bureau of Internal Revenue (BIR)'s assessments for deficiency income tax, value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT), documentary stamps tax (DST), and improperly accumulated earnings tax (IAET), against Nippon for calendar year 2016.[5]

Petitioner Commissioner of Internal Revenue (CIR)[6] issued a Formal Letter of Demand (FLD)[7] and Final Assessment Notices (FAN),[8] both dated March 23, 2022, finding Nippon liable for the alleged deficiency taxes amounting to PHP 81,345,123.84, computed as follows:

Tax Type

Basic Tax

Interest

Surcharge

Tax Due

Income tax

[PHP] 9,582,426.00

[PHP] 6,248,266.82

[PHP] 15,830,692.82

VAT[9]

58,744.76

40,879.91

99,624.67

WTC[10]

68,872.18

48,304.87

117,177.05

EWT[11]

4,613,449.70

3,235,734.59

7,849,184.29

DST[12]

210,034.00

148,462.38

[PHP] 52,508.50

411,004.88

IAET[13]

32,395,945.25

16,359,508.57

8,098,986.31

56,854,440.13

Compromise Penalty[14]

[PHP] 183,000.00

Total

[PHP] 81,345,123.84

Nippon protested the assessments administratively, requesting for reinvestigation. Thereafter, on October 2, 2023, the CIR issued a Final Decision on Disputed Assessment (FDDA), requiring Nippon to pay the alleged deficiency taxes on or before December 31, 2023, viz.:

This constitutes the Final Decision of [t]his Office on the matter, thus, you are required to pay your aforesaid deficiency tax liabilities through the Electronic Filing and Payment System (eFPS) using the BIR Payment Form (BIR Form No. 0605). Afterwards, submit copy thereof to the Office of the Assistant Commissioner – Large Taxpayers Service located at Room 307, 3rd Floor, National Office Building, BIR Road Diliman, Quezon City on or before December 31, 2023 for updating of your records and cancellation of the herein assessment if warranted.[15] (Emphasis supplied)

Before the deadline set in the FDDA, a Warrant of Dstraint and/or Levy dated October 15, 2023 and Warrant of Garnishment dated October 18, 2023 were issued against Nippon.[16]

Aggrieved, Nippon appealed the FDDA to the CTA; the case was docketed as CTA Case No. 11294. Nippon's petition was accompanied by an Urgent Application for a Writ of Preliminary Prohibitory Injunction and Urgent Motion for the Issuance of Temporary Suspension Order and/or Temporary Restraining Order and Motion to Lift the Warrant of Garnishment (Motion to Suspend, for brevity) to contest the BIR's attempts to collect.[17]

On September 27, 2024, the CTA Division granted Nippon's Motion to Suspend (Suspension Order). It agreed with Nippon that the taxes sought to be collected by the BIR were not yet delinquent; thus, its collection measures (i.e., WDL, WOG) were premature and illegal.[18] It cited *People v. Mendez*[19] wherein the Court held that a taxpayer may be properly regarded as delinquent only upon the failure to pay the assessed tax within the period stated in the notice and demand.

The CTA Division underscored that, in the FDDA, the CIR expressly gave Nippon until December 31, 2023, to pay the alleged deficiency amount. However, the tax authorities proceeded to collect from Nippon as early as October 15, 2023. Thus, the issuance of the WDL and WOG were premature, as these were pertaining to a non-demandable assessment.[20]

After the denial[21] of its subsequent motion for reconsideration, the CIR, represented by the BIR Legal Division, challenges the CTA's Suspension Order via the present Rule 65 petition.[22]

The Petition is dismissed.

At the outset, the Court observes that the CIR was not represented by the Office of the Solicitor General (OSG) when it filed the present case. There is also no showing that the BIR Litigation Division was ever duly authorized by the OSG to represent the CIR and to file the instant petition.

It is the OSG's statutory mandate to "represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party." [23]

In *Commissioner of Internal Revenue v. La Suerte Cigar & Cigarette Factory*, [24] the CIR's direct filing of a petition before this Court, absent the requisite authority or representation of the OSG, constituted a procedural defect tantamount to non-fulfillment of the mandatory verification requirement. This ruling led to the execution of Memorandum of Agreement between the OSG and BIR, which was communicated to all revenue officers and other concerned parties via Revenue Memorandum Circular No. 025-10.[25]

The terms of this agreement made it clear that representation of the CIR/BIR before this Court, particularly in petitions assailing CTA rulings, is exclusive to the OSG, viz.:

B. Handling Cases

. . . .

- Cases appealed before the Regional Trial Courts, Court of Appeals and the Court of Tax Appeals En Banc.
- The OSG hereby deputizes BIR handling lawyers to:
 - Appear before the Courts; and
 - Continue the prosecution/litigation of appealed tax cases before the Regional Trial Courts, Court of Appeals and the Court of Tax Appeals En Banc.

The BIR handling lawyer shall have the following responsibilities:

- To appear before courts; and
- To prepare all pleadings, motions, orders, decisions, resolutions, communications and other papers/documents in connection with the case.
- The BIR shall periodically submit a list of handling lawyers to the OSG for purposes of deputation.
- Cases appealed before the Supreme Court.
- The OSG handling Associate Solicitor shall be the lead lawyer and the BIR handling lawyer will turn over the case records to the former.
- Immediately upon receipt of the resolution of the Court of Tax Appeals En Banc denying the motion for reconsideration, the BIR handling lawyer shall inform the OSG of such decision and forward the entire case file to the OSG Associate Solicitor within two (2) days from receipt of the decision.
- The BIR shall prepare a summary of facts, to help assist the OSG to determine/evaluate whether the case should be pursued or not.
- In case the OSG is of the opinion than the appeal before the Supreme Court should not be pursued, it shall inform the BIR of its position within ten (10) days from its receipt of the Decision, but it should be at least three (3) working days before the lapse of the period to appeal. In these cases, it shall be the responsibility of the OSG to file the necessary Motion for Extension of Time to File Petition for Review before the Supreme Court.
- In the event that the OSG pursues an appeal before the Supreme Court, the OSG handling Associate Solicitor shall have the following responsibilities:

i.

To appear before the Supreme Court.

ii.

To prepare all pleadings, motions, orders, decisions, resolutions, communications, etc. in connection with the

case.

iii.

To furnish copies thereof to the BIR handling lawyer, through registered mail.

- In the prosecution/litigation of the appealed case, the handling lawyer of the Bureau should make himself/herself available for consultation with the OSG handling lawyer regarding the case.
- In case of favourable resolutions/decisions, the BIR handling lawyer is under obligation to obtain the necessary court orders for the enforcement of the decision/resolutions. Thus, in cases decided by the Supreme Court in BIR's favour, the Assistant Solicitor shall return the case records with the original final decision within fifteen (15) days from receipt thereof.[26] (Emphasis supplied)

While the OSG may deputize BIR lawyers, the latter's authority does not extend to representation before the Court. When the CIR is aggrieved by CTA rulings, it cannot proceed to this Court on its own, without the OSG's approval. In case the OSG finds it proper to proceed to the Supreme Court, it shall remain as the lead lawyer.

It has been held that a petition filed without the OSG's imprimatur, when it is required, shall be defective; this shall be sufficient ground to dismiss the petition.[27] While this rule was relaxed in *La Suerte*, the Court does not find any reason to do so in this case; the CIR/BIR is expected to observe the pronouncement in *La Suerte* and the guidelines set out in its own agreement with the OSG.[28] To stress, the CIR/BIR cannot file a petition directly before the Court without first obtaining permission from the OSG. Otherwise, the unauthorized filing shall be dismissed outright.

In any case, the ground cited by the CIR in challenging the CTA Division resolutions cannot be addressed by certiorari and prohibition.

The CIR equates grave abuse on the part of the CTA Division with the tax court's supposed misinterpretation of the law and tax regulations, specifically, on the definition of delinquency. Absent any caprice, bias, or arbitrariness, this supposed mistake does not amount to grave abuse.

Certiorari and prohibition shall be allowed when it is demonstrated that the challenged acts were committed not merely by mistake, as a result of a misinterpretation of law or misappreciation of evidence; the petitioner must demonstrate that there was an arbitrary, capricious, or whimsical exercise of judgment, amounting to lack of jurisdiction. "The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." [29] It is settled that these remedies under Rule 65 shall be issued only to correct errors of jurisdiction; these shall be inappropriate when errors or mistakes in the findings and conclusions of the lower court are concerned.[30]

Be that as it may, the Court does not find any grave abuse of discretion on the part of the CTA Division.

In the recent case of *Commissioner of Internal Revenue v. Second Division of the Court of Tax Appeals*, [31] "a party availing of [a suspension of collection of taxes] must make a request in its petition or separate motion before the tax court; it must establish its entitlement thereto via affidavits and documentary evidence. Further, it has been underscored in *Spouses Pacquiao v. Court of Tax Appeals* [32] that, in the preliminary hearing, the CTA is tasked to weigh the State's power of taxation against a taxpayer's rights to due process and equal protection; the tax court has the commensurate power to dispense with the bond requirement altogether when it finds that the collection measures employed are "not sanctioned by the law."

Precisely, the CTA conducted the preliminary hearing on Nippon's Motion to Suspend on March 6, 2024.[33] Thereafter, Nippon filed its Formal Offer of Evidence in support of its motion; their submission consisted of the relevant warrants issued against them even before the 30-day payment period set in the FDDA had even expired.

For its part, the CIR duly filed its Comment/Opposition to the Motion to Suspend, cross examined Nippon's witness during the preliminary hearing, as well as comment on the Formal Offer of Evidence.

The CTA ordered the suspension because the warrants were issued prematurely. As such hasty collection is unlawful,[34] the tax court likewise dispensed with the bond requirement.

These circumstances demonstrate that the suspension order, including the waiver of the bond requirement, were adequately explained, in accordance with the conditions for suspension set out in Section 11 of Republic Act No. 1125, as amended, and issued after observing the procedure laid out Rule 10 of the Revised Rules of the CTA.[35] There is no reason to annul the assailed Resolutions, or enjoin their execution.

ACCORDINGLY, the present Petition for Certiorari and Prohibition is DISMISSED for lack of merit.

SO ORDERED.

Caguioa (Chairperson), Gaerlan, and Dimaampao, JJ., concur.
Singh,[*] J., on leave.

[*] On leave.

[1] Rollo, pp. 3-32.

[2] Id. at 35-44.

[3] Id. at 47-50.

[4] Id. at 38.

[5] Id. at 57-60.

[6] Id. at 51-56. Through Arnel SD. Guballa, Deputy Commissioner, BIR Operations Group.

[7] Id.

[8] Id. at 61-67.

[9] Id. at 62.

[10] Id. at 63.

[11] Id. at 64.

[12] Id. at 65.

[13] Id. at 66.

[14] Id. at 67.

[15] Id. at 37.

[16] Id. at 35.

[17] Id.

[18] Id. at 38.

[19] 938 Phil. 655 (2023) [Per J. Lopez, M., En Banc].

[20] Rollo, p. 37.

[21] Id. at 50.

[22] Id. at 3.

[23] ADM. CODE (1987), Book IV, Title III, Chapter 12, sec. 35(1).

[24] 433 Phil. 463 (2002) [Per J. Vitug, En Banc]

[25] BIR Revenue Memorandum Circular No. 025-10 (2010). Publishing the Full Text of the Memorandum of Agreement between the BIR and the OSG.

[26] Id.

[27] Republic v. "G" Holdings Inc., 512 Phil. 253, 261 (2005) [Per J. Corona, Third Division].

[28] Commissioner of Internal Revenue v. Second Division of the Court of Tax Appeals, G.R. No. 280165, August 4, 2025 [Per J. Inting, Third Division] at 3. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[29] People v. Court of Tax Appeals-Third Division, 929 Phil. 454, 473 (2022) [Per J. Dimaampao, Third Division].

[30] Candelaria v. RTC, Branch 42, City of Sun Fernando, 739 Phil. 1, 8-9 (2014) [Per J. Del Castillo, Second Division].

[31] G.R. No. 280165, August 4, 2025 [Per J. Inting, Third Division]. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[32] 784 Phil. 220, 246 (2016) [Per J. Mendoza, Second Division].

[33] Case History for CTA Case No. 11294, available at <https://cta.judiciary.gov.ph/history> (last accessed on February 24, 2026).

[34] In Commissioner of Internal Revenue v. Second Division of the Court of Tax Appeals, *supra* note 28, at 3. The Court held, "The CTA Division explained at length that the tax authorities' immediate resort to summary administrative remedies for collection after the issuance of the FDDA but before the expiration of the 30-day period to appeal to the CTA deprived American Wire the opportunity to dispute the assessment judicially. Such contravention of the law and rules jeopardized the interests of both the government and taxpayer."

[35] A.M. No. 05-11-07-CTA, November 22, 2005.

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