

SECOND DIVISION

[G.R. No. 213394, April 06, 2016]

**SPOUSES EMMANUEL D. PACQUIAO AND JINKEE J. PACQUIAO,
PETITIONERS, VS. THE COURT OF TAX APPEALS - FIRST
DIVISION AND THE COMMISSION OF INTERNAL REVENUE,
RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

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

Through the assailed issuances, the CTA granted the petitioners' Urgent Motion to Lift Warrants of Distrainment & Levy and Garnishment and for the Issuance of an Order to Suspend the Collection of Tax (with Prayer for the Issuance of a Temporary Restraining Order^[4] [*Urgent Motion*], dated October 18, 2013, but required them, as a condition, to deposit a cash bond in the amount of P3,298,514,894.35-or post a bond of P4,947,772,341.53.

The Antecedents

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

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

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

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

Finding the need to directly conduct the investigation and determine the tax liabilities of the petitioners, respondent Commissioner on Internal Revenue (*CIR*) issued another Letter of Authority, dated July 27, 2010 (*July LA*), authorizing the BIR's National Investigation Division (*NID*) to examine the books of accounts and other accounting records of both Pacquiao and Jinkee for the last 15 years, from 1995 to 2009.^[11] On September 21, 2010 and September 22, 2010, the CIR replaced the July LA by issuing to both Pacquiao^[12] and Jinkee^[13] separate electronic versions of the July LA pursuant to Revenue Memorandum Circular (*RMC*) No. 56-2010.^[14]

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

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

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

[Emphasis Supplied]

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

On January 5 and 21, 2011, the petitioners submitted various income tax related documents for the years 2007-2009.^[18] As for the years 1995 to 2006, the petitioners explained that they could not furnish the bureau with the books of accounts and other, tax related documents as they had already been disposed in accordance with Section 235 of the Tax Code.^[19] They added that even if they wanted to, they could no longer find copies of the documents because during those years, their accounting records were then managed by previous counsels, who had since passed away. Finally, the petitioners pointed out that their tax liabilities for the

said years had already been fully settled with then CIR Jose Mario Buñag, who after a review, found no fraud against them.^[20]

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

After conducting its own- investigation, the CIR made its initial assessment finding that the petitioners were unable to fully settle their tax liabilities. Thus, the CIR issued its Notice of Initial Assessment-Informal Conference (*NIC*),^[22] dated January 31, 2012, **directly addressed to the petitioners**, informing them that based on the best evidence obtainable, they were liable for deficiency **income taxes** in the amount of P714,061,116.30 for 2008 and P1,446,245,864.33 for 2009, inclusive of interests and surcharges. After being informed of this development, the counsel for the petitioners sought to have the conference reset but he never received a response.

Then, on "February 20, 2012, the CIR issued the Preliminary Assessment Notice^[23] (*PAN*), informing the petitioners that based on *third-party information* allowed under Section 5(B)^[24] and 6 of the National Internal Revenue Code (*NIRC*),^[25] they found the petitioners liable not only for deficiency **income taxes** in the amount of P714,061,116.30 for 2008 and P1,446,245,864.33 for 2009, but also for their non-payment of their **VAT liabilities** in the amount P4,104,360.01 for 2008 and P 24,901,276.77 for 2009.

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

After denying the protest, the BIR issued its Formal Letter Demand^[27] (*FLD*), dated May 2, 2012, finding the petitioners liable for deficiency income tax and VAT amounting to P766,899,530.62 for taxable years 2008 and P1,433,421,214.61 for 2009, inclusive of interests and surcharges. Again, the petitioners questioned the findings of the CIR.^[28]

On May 14, 2013, the BIR issued its Final Decision on Disputed Assessment (*FDDA*),^[29] addressed to *Pacquiao only*, informing him that the CIR found him liable for deficiency income tax and VAT for taxable years 2008 and 2009 which, inclusive of interests and surcharges, amounted to a total of P2,261,217,439.92.

Seeking to collect the total outstanding tax liabilities of the petitioners, the Accounts Receivable Monitoring Division of the BIR (BIR-ARMD), issued the Preliminary Collection Letter (PCL),^[30] dated July 19, 2013, demanding that both Pacquiao and Jinkee pay the amount of P2,261,217,439.92, inclusive of interests and surcharges.

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

Although they no longer questioned the BIR's assessment of their **deficiency VAT**

liability, the petitioners requested that they be allowed to pay the same in four (4) quarterly installments. Eventually, through a series of installments, Pacquiao and Jinkee paid a total P32,196,534.40 in satisfaction of their liability for deficiency VAT.^[32]

Proceedings at the CTA

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

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

They also questioned the validity of the attempt by the CIR to collect deficiency taxes from Jinkee, arguing that she was denied due process. According to the petitioners, as all previous communications and notices from the CIR were addressed to both petitioners, the FDDA was void because it was only addressed to Pacquiao. Moreover, considering that the PCL and FNBS were based on the FDDA, the same should likewise be declared void.^[35]

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

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

Meanwhile, in a letter,^[38] dated October 14, 2013, the BIR-ARMD informed the petitioners that they were denying their request to defer the collection enforcement action for lack of legal basis. The same letter also informed the petitioners that despite their initial payment, the amount to be collected from both of them still amounted to P3,259,643,792.24, for **deficiency income tax** for taxable years 2008 **and** 2009, and P46,920,235.74 for **deficiency VAT** for the same period. A warrant of distraint and/or levy^[39] against Pacquiao and Jinkee was included in the letter.

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

On April 22, 2014, the CTA issued the first assailed resolution granting the

petitioner's Urgent Motion, ordering the CIR to desist from collecting on the deficiency tax assessments against the petitioners. In its resolution, the CTA noted that the amount sought to be collected was way beyond the petitioners' net worth, which, based on Pacquiao's Statement of Assets, Liabilities and Net Worth (*SALN*), only amounted to P1,185,984,697.00. Considering that the petitioners still needed to cover the costs of their daily subsistence, the CTA opined that the collection of the total amount of P3,298,514,894.35 from the petitioners would be highly prejudicial to their interests and should, thus, be suspended pursuant to Section 11 of R.A. No. 1125, as amended.

The CTA, however, saw no justification that the petitioners should deposit less than the disputed amount. They were, thus, required to deposit the amount of P3,298,514,894.35 or post a bond in the amount of P4,947,772,341.53.

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

Hence, this petition, raising the following

GROUND

A.

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

B.

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

- 1. Respondent Commissioner commenced tax collection process against Jinkee without issuing or serving an FDDA against her.**
- 2. Respondent Commissioner failed to comply with the procedural due process requirements for summary tax collection remedies under Sections 207(A) and (B) of the Tax Code when she commenced summary collection**