when the RTC-Las Piñas Br. 275 took cognizance of Civil Case No. LP-03-0088, it acquired full jurisdiction over the matters at hand, to the exclusion of all other coordinate courts. Thus, in consonance with the afore-discussed doctrine, the proper remedy to assail orders originating from the RTC-Las Piñas Br. 275 is to file an action before a higher court with authority to nullify such orders and not before a co-equal body. Hence, the RTC-Las Piñas Br. 198 erred in taking cognizance of Civil Case No. LP-07-0037 as this case sought to annul an order coming from a co-equal court. Verily, the RTC-Las Piñas Br. 198 should have dismissed Civil Case No. LP-07-0037 on the ground of lack of jurisdiction, without prejudice to its re-filing in the appropriate court.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 27, 2014, and the Resolution dated November 10, 2014 of the Court of Appeals in CA-G.R. CV No. 100487 are hereby **SET ASIDE**. Civil Case No. LP-07-0037, originally pending before the Regional Trial Court of Las Piñas City, Branch 198, is **DISMISSED** on the ground of lack of jurisdiction.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 215950. June 20, 2016]

TRIDHARMA MARKETING CORPORATION, *petitioner, vs.* **COURT OF TAX APPEALS, SECOND DIVISION, and THE COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

SYLLABUS

1. **TAXATION; COURT OF TAX APPEALS (CTA) UNDER RA NO. 1125 AS AMENDED BY RA 9282; UNDER SECTION 11, THE CTA MAY ORDER THE SUSPENSION OF THE COLLECTION OF TAXES PROVIDED THAT THE TAXPAYER EITHER: (1) DEPOSITS THE AMOUNT CLAIMED; OR (2) FILES A SURETY BOND FOR NOT MORE THAN DOUBLE THE AMOUNT.—** [Under] Section 11 of Republic Act No. 1125 (R.A. No. 1125), as amended by Republic Act No. 9282 (RA 9282) it is stated that: x x x No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: ***Provided, however,*** **That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.** Clearly, the CTA may order the suspension of the collection of taxes provided that the taxpayer either: (1) deposits the amount claimed; or (2) files a surety bond for not more than double the amount.

2. **ID.; ID.; ID.; ON FILING OF SURETY BOND, GRAVE ABUSE OF DISCRETION WAS COMMITTED IN FIXING THE AMOUNT OF BOND AT NEARLY FIVE TIMES THE NET WORTH OF PETITIONER WITHOUT CONDUCTING THE NECESSARY PRELIMINARY HEARING; REMAND OF THE CASE TO THE CTA MADE PROPER.—** The petitioner argues that the surety bond amounting to ₱4,467,391,881.76 greatly exceeds its net worth and makes it legally impossible to procure the bond from bonding companies that are limited in their risk assumptions. As shown in its audited financial statements for the year ending December 31, 2013, its net worth only amounted to ₱916,768,767.00, making the amount of ₱4,467,391,881.76 fixed for the bond nearly five times greater than such net worth. x x x [T]he CTA in Division gravely abused its discretion under Section 11 because

it fixed the amount without conducting a preliminary hearing to ascertain whether there were grounds to suspend the collection of the deficiency assessment on the ground that such collection would jeopardize the interests of the taxpayer. x x x Moreover, Section 11 of R.A. No. 1125, as amended, indicates that the requirement of the bond as a condition precedent to suspension of the collection applies only in cases where the processes by which the collection sought to be made by means thereof are carried out in consonance with the law, not when the processes are in plain violation of the law that they have to be suspended for jeopardizing the interests of the taxpayer. x x x Consequently, to prevent undue and irreparable damage to the normal business operations of the petitioner, the remand to the CTA of the questions involving the suspension of collection and the correct amount of the bond is the proper course of action.

APPEARANCES OF COUNSEL

Siguion Reyna, Montecillo & Ongsiako for petitioner.
The Solicitor General for respondents.

D E C I S I O N

BERSAMIN, *J.*:

In this special civil action for *certiorari*,[1] the taxpayer assails the resolutions issued on July 8, 2014[2] and December 22, 2014[3] in CTA Case No. 8833 whereby the Court of Tax Appeals (CTA), Second Division, granted its motion for suspension of the collection of tax but required it to post a surety bond amounting to ₱4,467,391,881.76.

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[1] *Rollo*, pp. 3-32; Petition for *Certiorari* (With Urgent Application for the Issuance of a Status Quo Ante Order/Temporary Restraining Order and/or Writ of Preliminary Injunction) filed under Rule 65 of the *Rules of Court.*

[2] *Id.* at 41-46; penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justice Caesar A. Casanova concurring. Associate Justice Amelia R. Cotangco-Manalastas was on leave but took part in the Resolution dated December 22, 2014.

[3] *Id.* at 47-51.

The relevant facts follow.

On August 16, 2013, the petitioner received a Preliminary Assessment Notice (PAN) from the Bureau of Internal Revenue (BIR) assessing it with various deficiency taxes — income tax (IT), value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT) and documentary stamp tax (DST) — totalling ₱4,640,394,039.97, inclusive of surcharge and interest. A substantial portion of the deficiency income tax and VAT arose from the complete disallowance[4] by the BIR of the petitioner's purchases from Etheria Trading in 2010 amounting to ₱4,942,937,053.82. The petitioner replied to the PAN through its letter dated August 30, 2013.[5]

On September 23, 2013, the petitioner received from the BIR a Formal Letter of Demand assessing it with deficiency taxes for the taxable year ending December 31, 2010 amounting to ₱4,697,696,275.25, inclusive of surcharge and interest. It filed a protest against the formal letter of demand. Respondent Commissioner of Internal Revenue (CIR) required the petitioner to submit additional documents in support of its protest, and the petitioner complied.[6]

On February 28, 2014, the petitioner received a Final Decision on Disputed Assessment worth ₱4,473,228,667.87, computed as follows:[7]

Tax Type	Basic Tax	Surcharge	Interest	Total
1. IT	1,527,100,903.98	763,550,451.99	878,605,999.55	₱3,169,257,355.52
2. VAT	612,723,525.25	306,361,762.63	379,049,238.36	1,298,134,526.24

[4] *Id.* at 7; The BIR disallowed all of petitioner's purchases from Etheria on the following grounds: (1) the invoices and receipts issued by Etheria were supposedly not valid evidence of the purchases because they were not pre-numbered, but stamped; (2) Etheria's Authority to Print receipts was unofficial; (3) the validity of petitioner's payments to Globalhills and Cadense, by virtue of SPA's issued by Etheria, were allegedly questionable in view of these entities' low capitalization; and (4) petitioner allegedly acted in bad faith.

[5] *Id.*

[6] *Id.* at 7-8.

[7] *Id.*

3. WHT	1,679,413.14		1,048,137.84	2,727,550.98
4. DST	534,493.40		336,511.18	871,004.58
5. EWT	1,378,127.78		860,102.76	2,238,230.54
TOTAL	**2,143,416,463.55**	**1,069,912,214.62**	**1,259,899,989.69**	**4,473,228,667.87**

The petitioner filed with the CIR a protest through a Request for Reconsideration. However, the CIR rendered a decision dated May 26, 2014 denying the request for reconsideration.[8]

Prior to the CIR's decision, the petitioner paid the assessments corresponding to the WTC, DST and EWT deficiency assessments, inclusive of interest, amounting to ₱5,836,786.10. It likewise reiterated its offer to compromise the alleged deficiency assessments on IT and VAT.[9]

On June 13, 2014, the petitioner appealed the CIR's decision to the CTA *via* its so-called Petition for Review with Motion to Suspend Collection of Tax, which was docketed as CTA Case No. 8833 and raffled to the CTA Second Division.[10]

The CTA in Division issued the first assailed resolution on July 8, 2014, stating thusly:

> In the instant case, petitioner's Financial Statements and Independent Auditor's Report for December 31, 2013 and 2012, as identified by its witness, indicate that the company's total equity for the year 2012 and 2013 was ₱955,095,301 and ₱916,768,767, respectively. To yield to respondent's alleged assessment and collection in the amount of ₱4,467,391,881.76 would definitely jeopardize the normal business operations of petitioner thereby causing irreparable injury to its ability to continue.
>
> Moreover, considering petitioner's willingness to post bond, as manifested during the June 19, 2014 hearing, in such reasonable amount as may be fixed by this Court, pursuant to Section 11 of R.A. No. 1125, as amended, this Court in the interest of substantial justice, resolves to grant petitioner's Motion.

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[8] *Id.* at 8.

[9] *Id.*

[10] *Id.*

x x x x x x x x x

WHEREFORE, considering the urgency of the action to be enjoined, petitioner's Motion for Suspension of Collection of Tax in the amount of ₱4,467,391,881.76 allegedly representing its deficiency Income Tax and Value Added Tax for taxable year 2010 is **GRANTED**. Provided, however, that petitioner deposits with this Court an acceptable surety bond equivalent to 150% of the assessment or in the amount of **SIX BILLION SEVEN HUNDRED ONE MILLION EIGHTY SEVEN THOUSAND EIGHT HUNDRED TWENTY TWO and 64/100 PESOS (₱6,701,087,822.64)** within fifteen (15) days from notice hereof.

Moreover, pursuant to Supreme Court Circular *A.M. No. 04-7-02-SC*, otherwise known as the "Proposed Guidelines on Corporate Surety Bonds", petitioner is hereby **ORDERED** to submit the following documents with the surety bond stated above:

1. Certified copy of a valid Certificate of Accreditation and Authority issued by the Office of the Court Administrator;

2. Copy of the Certificate of Compliance with Circular No. 66 of the Insurance Commission duly certified by the Insurance Commission;

3. Proof of payment of legal fees under the Rules of Court and the documentary stamp tax (thirty centavos [₱0.30] on each four pesos [₱4.00] or fractional part thereof, of the premium charged, pursuant to Section 187 Title VII of Rep. Act No. 8424) and Value Added Tax (VAT) under the National Internal Revenue Code;

4. Photocopy of the Certificate of Accreditation and Authority issued by the Court Administrator containing the photograph of the authorized agent (after presentation to the Clerk of Court of the original copy thereof as Copy of the Certificate of Accreditation and Authority containing the photograph of the agent); and

5. Secretary Certificate containing the specimen signatures of the agents authorized to transact business with the courts.

In addition, the said bond must be a continuing bond which shall remain effective until the above-captioned case is finally decided, resolved or terminated by this Court without necessity of renewal on a yearly basis, or its validity being dependent on the payment of a renewal premium pursuant to Section 177 of the Insurance Code.

Failure to comply with the above requirements will cause the setting aside of this Resolution granting petitioner's motion for the suspension of the collection of the tax liability.

x x x x x x x x x

SO ORDERED.[11]

The petitioner filed its Motion for Partial Reconsideration praying, among others, for the reduction of the bond to an amount it could obtain.

On December 22, 2014, the CTA in Division issued its second assailed resolution reducing the amount of the petitioner's surety bond to ₱4,467,391,881.76, which was the equivalent of the BIR's deficiency assessment for IT and VAT.[12]

Hence, the petitioner has commenced this special civil action for *certiorari*, asserting:

I.

WITH ALL DUE RESPECT, THE CTA SECOND DIVISION COMMITTED GRAVE ABUSE OF DISCRETION IN REFUSING TO CONSIDER, AND IN COMPLETELY IGNORING, THE PATENT ILLEGALITY OF THE ASSESSMENT THAT, UNDER LAW AND JURISPRUDENCE, FULLY JUSTIFIED DISPENSING WITH THE REQUIREMENT OF POSTING A BOND.

II.

WITH ALL DUE RESPECT, THE CTA SECOND DIVISION COMMITTED GRAVE ABUSE OF DISCRETION IN IMPOSING A GARGANTUAN BOND IN THE AMOUNT OF ₱4,467,391,881.76 THAT PETITIONER HAS DEMONSTRATED BY UNREFUTED EVIDENCE TO BE FACTUALLY AND LEGALLY IMPOSSIBLE TO PROCURE.

III.

WITH ALL DUE RESPECT, THE CTA SECOND DIVISION COMMITTED GRAVE ABUSE OF DISCRETION IN

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[11] *Id.* at 44-46.

[12] *Id.* at 50-51.

GRANTING AN ILLUSORY RELIEF, AND IN EFFECTIVELY DENYING PETITIONER ACCESS TO THE REMEDY PROVIDED BY LAW. UPON UNCONTRADICTED EVIDENCE, THE IMPOSITION OF A BOND IS NOT ONLY UNJUST, BUT WILL CAUSE IRREPARABLE INJURY UPON PETITIONER EVEN BEFORE IT IS HEARD.[13]

On February 9, 2015, the Court issued a temporary restraining order[14] enjoining the implementation of July 8, 2014 and December 22, 2014 resolutions of the CTA in Division, and the collection of the deficiency assessments.

Issue

Did the CTA in Division commit grave abuse of discretion in requiring the petitioner to file a surety bond despite the supposedly patent illegality of the assessment that was beyond the petitioner's net worth but equivalent to the deficiency assessment for IT and VAT?

Ruling of the Court

The petition for *certiorari* is meritorious.

Section 11 of Republic Act No. 1125 (R.A. No. 1125),[15] as amended by Republic Act No. 9282 (RA 9282)[16] it is stated that:

> Sec. 11. *Who may appeal; effect of appeal.* — x x x
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> x x x x x x x x x

No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs

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[13] *Id.* at 13-14.

[14] *Id.* at 325-327.

[15] Entitled *An Act Creating the Court of Tax Appeals.*

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

shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: ***Provided, however,* That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.** (bold emphasis supplied.)

Clearly, the CTA may order the suspension of the collection of taxes provided that the taxpayer either: (1) deposits the amount claimed; or (2) files a surety bond for not more than double the amount.

The petitioner argues that the surety bond amounting to ₱4,467,391,881.76 greatly exceeds its net worth and makes it legally impossible to procure the bond from bonding companies that are limited in their risk assumptions.[17] As shown in its audited financial statements for the year ending December 31, 2013, its net worth only amounted to ₱916,768,767.00,[18] making the amount of ₱4,467,391,881.76 fixed for the bond nearly five times greater than such net worth.

The surety bond amounting to ₱4,467,391,881.76 imposed by the CTA was within the parameters delineated in Section 11 of R.A. 1125, as amended. The Court holds, however, that the CTA in Division gravely abused its discretion under Section 11 because it fixed the amount of the bond at nearly five times the net worth of the petitioner without conducting a preliminary hearing to ascertain whether there were grounds to suspend the collection of the deficiency assessment on the ground that such collection would jeopardize the interests of the taxpayer. Although the amount of ₱4,467,391,881.76 was itself the amount of the assessment, it behoved the CTA in Division to consider other factors recognized by the law itself towards suspending the

[17] *Rollo*, pp. 18-23.

[18] *Id.* at 129.

collection of the assessment, like whether or not the assessment would jeopardize the interest of the taxpayer, or whether the means adopted by the CIR in determining the liability of the taxpayer was legal and valid. Simply prescribing such high amount of the bond like the initial 150% of the deficiency assessment of ₱4,467,391,881.76 (or ₱6,701,087,822.64), or later on even reducing the amount of the bond to equal the deficiency assessment would practically deny to the petitioner the meaningful opportunity to contest the validity of the assessments, and would likely even impoverish it as to force it out of business.

At this juncture, it becomes imperative to reiterate the principle that the power to tax is not the power to destroy. In *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue,*[19] the Court has stressed that:

> As a general rule, the power to tax is an incident of sovereignty and is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency who is to pay it. So potent indeed is the power that it was once opined that the power to tax involves the power to destroy.

Petitioner claims that the assessed DST to date which amounts to ₱376 million is way beyond its net worth of ₱259 million. Respondent never disputed these assertions. Given the realities on the ground, imposing the DST on petitioner would be highly oppressive. It is not the purpose of the government to throttle private business. On the contrary, the government ought to encourage private enterprise. Petitioner, just like any concern organized for a lawful economic activity, has a right to maintain a legitimate business. As aptly held in *Roxas, et al. v. CTA, et al.*:

> The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector "kill the hen that lays the golden egg."

Legitimate enterprises enjoy the constitutional protection not to be taxed out of existence. Incurring losses because of a tax imposition

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[19] G.R. No. 167330, September 18, 2009, 600 SCRA 413, 442-444.

may be an acceptable consequence but killing the business of an entity is another matter and should not be allowed. It is counter-productive and ultimately subversive of the nation's thrust towards a better economy which will ultimately benefit the majority of our people.

Moreover, Section 11 of R.A. 1125, as amended, indicates that the requirement of the bond as a condition precedent to suspension of the collection applies only in cases where the processes by which the collection sought to be made by means thereof are carried out in consonance with the law, not when the processes are in plain violation of the law that they have to be suspended for jeopardizing the interests of the taxpayer.[20]

The petitioner submits that the patent illegality of the assessment was sufficient ground to dispense with the bond requirement because the CIR was essentially taxing its sales revenues without allowing the deduction of the cost of goods sold by virtue of the CIR refusing to consider evidence showing that it had really incurred costs.[21] However, the Court is not in the position to rule on the correctness of the deficiency assessment, which is a matter still pending in the CTA. Conformably with the pronouncement in *Pacquiao v. Court of Tax Appeals, First Division, and the Commissioner of Internal Revenue*,[22] a ruling that has precedential value herein, the Court deems it best to remand the matter involving the petitioner's plea against the correctness of the deficiency assessment to the CTA for the conduct of a preliminary hearing in order to determine whether the required surety bond should be dispensed with or reduced.

In *Pacquiao*, the petitioners were issued deficiency IT and VAT assessments for 2008 and 2009 in the aggregate amount of ₱2,261,217,439.92, which amount was above their net worth of ₱1,185,984,697.00 as reported in their joint Statement of

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[20] See *Collector of Internal Revenue v. Reyes and Court of Tax Appeals*, 100 Phil. 822, 828 (1957).

[21] *Rollo*, pp. 14-18.

[22] G.R. No. 213394, April 6, 2016.

Assets, Liabilities and Net Worth (SALN). They had paid the VAT assessments but appealed to the CTA the IT assessments. Notwithstanding their appeal, the CIR still initiated collection proceedings against them by issuing warrants of distraint or levy against their properties, and warrants of garnishment against their bank accounts. As a consequence, they went to the CTA through an urgent motion to lift the warrants and to suspend the collection of taxes. The CTA in Division found the motion to suspend tax collection meritorious, and lifted the warrant of distraint or levy and garnishment on the condition that they post a cash bond of ₱3,298,514,894.35, or surety bond of ₱4,947,772,341.53. They thus came to the Court to challenge the order to post the cash or surety bond as a condition for the suspension of collection of their deficiency taxes. In resolving their petition, the Court held and disposed:

> Absent any evidence and preliminary determination by the CTA, the Court cannot make any factual finding and settle the issue of whether the petitioners should comply with the security requirement under Section 11, R.A. No. 1125. The determination of whether the methods, employed by the CIR in its assessment, jeopardized the interests of a taxpayer for being patently in violation of the law **is a question of fact that calls for the reception of evidence** which would serve as basis. In this regard, the CTA is in a better position to initiate this given its time and resources. The remand of the case to the CTA on this question is, therefore, more sensible and proper.
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> For the Court to make any finding of fact on this point would be premature. As stated earlier, there is no evidentiary basis. All the arguments are mere allegations from both sides. Moreover, **any finding by the Court would pre-empt the CTA** from properly exercising its jurisdiction and settle the main issues presented before it, that is, whether the petitioners were afforded due process; whether the CIR has valid basis for its assessment; and whether the petitioners should be held liable for the deficiency taxes.
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> x x x x x x x x x
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> In the conduct of its preliminary hearing, the CTA must balance the scale between the inherent power of the State to tax and its right to prosecute perceived transgressors of the law, on one side; and the constitutional rights of petitioners to due process of law and the equal protection of the laws, on the other. In case of doubt,

the tax court must remember that as in all tax cases, such scale should favor the taxpayer, for a citizen's right to due process and equal protection of the law is amply protected by the Bill of Rights under the Constitution.[23]

Consequently, to prevent undue and irreparable damage to the normal business operations of the petitioner, the remand to the CTA of the questions involving the suspension of collection and the correct amount of the bond is the proper course of action.

WHEREFORE, the Court **GRANTS** the petition for *certiorari*; **ANNULS** and **SETS ASIDE** the resolutions issued on July 8, 2014 and December 22, 2014 in CTA Case No. 8833 requiring the petitioner to post a surety bond of ₱4,467,391,881.76 as a condition to restrain the collection of the deficiency taxes assessed against it; **PERMANENTLY ENJOINS** the enforcement of the resolutions issued on July 8, 2014 and December 22, 2014 in CTA Case No. 8833; and **REQUIRES** the Court of Tax Appeals, Second Division, to forthwith conduct a preliminary hearing in CTA Case No. 8833 to determine and rule on whether the bond required under Section 11 of Republic Act No. 1125 may be dispensed with or reduced to restrain the collection of the deficiency taxes assessed against the petitioner.

No pronouncement on costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

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[23] *Id.*