

*EN BANC*

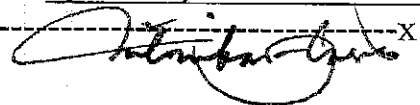
**G.R. No. 211772 – INTEGRATED BAR OF THE PHILIPPINES, *Petitioner*, PHILIPPINE COLLEGE OF PHYSICIANS, PHILIPPINE MEDICAL ASSOCIATION, INC., AND PHILIPPINE DENTAL ASSOCIATION, *Petitioners-in-Intervention* v. SECRETARY CESAR V. PURISIMA OF THE DEPARTMENT OF FINANCE AND COMMISSIONER KIM S. JACINTO-HENARES OF THE BUREAU OF INTERNAL REVENUE, *Respondents*.**

**G.R. No. 212178 – ASSOCIATION OF SMALL ACCOUNTING PRACTITIONERS IN THE PHILIPPINES, INC., *Petitioner* v. HON. SECRETARY OF FINANCE CESAR V. PURISIMA AND HON. COMMISSIONER OF INTERNAL REVENUE KIM S. JACINTO-HENARES, *Respondents*.**

Promulgated:

April 18, 2023

X



**CONCURRING OPINION**

**SINGH, J.:**

In these consolidated cases, the petitioners Integrated Bar of the Philippines (**IBP**) and Association of Small Accounting Practitioners in the Philippines, Inc. (**ASAPPI**), together with the petitioners-in-intervention Philippine College of Physicians (**PCP**), Philippine Medical Association, Inc. (**PMAI**), and the Philippine Dental Association (**PDA**) (collectively, **petitioners-in-intervention**), assail the constitutionality of Revenue Regulations (**RR**) No. 4-2014, issued on March 3, 2014 by the public respondent then Secretary of the Department of Finance (**DOF**) Cesar V. Purisima, upon the recommendation of the public respondent then Bureau of Internal Revenue (**BIR**) Commissioner Kim S. Jacinto-Henares.

RR No. 4-2014 states:

Section 1. *Background* —

In line with the Bureau of Internal Revenue's (BIR) campaign to promote transparency and to eradicate tax evasion among self-employed professionals, the BIR has consistently enjoined them to comply with the BIR's requirements on registration pursuant to Section 236 of the National Internal Revenue Code (NIRC) of 1997, as amended and issuance of official receipts and invoices under Sections 113 and 237 of the same Code. In order



to complement these efforts, there is a pressing need to monitor the service fees charged by self-employed professionals.

Pursuant to Section 244 of the NIRC of 1997, as amended, these regulations are issued for the purpose of monitoring the fees charged by the professionals, aid the BIR personnel in conducting tax audit and boost revenue collections in such sectors.

Section 2. *Policies and Guidelines* —

1. Self-employed professionals shall register and pay the annual registration fee (ARF) with the RDO/LTDO having jurisdiction over them. In addition to the requirements for annual registration, all self-employed professionals shall submit an affidavit indicating the rates, manner of billings and the factors they consider in determining their service fees upon registration and every year thereafter on or before January 31.

2. Self-employed professionals are obligated to register the books of accounts and official appointment books of their practice of profession /occupation/calling before using the same. The official appointment books shall contain only the names of the client and the date/time of the meeting. They are likewise obligated to register their sales invoices and official receipts (VAT or non-VAT) before using them in any transactions.

3. In cases when no professional fees are charged by the professional and paid by client, a BIR registered receipt, duly acknowledged by the latter, shall be issued showing a discount of 100% as substantiation of the “pro-bono” service.

SECTION 3. Transitory Provision. — All existing and registered self-employed professionals at the time these Regulations became effective are required to submit the required affidavit and register its official appointment books within thirty (30) days from date of effectivity of these Regulations.

SECTION 4. Penalty Clause. — Any violation of the provisions of these Regulations shall be subject to the penalties provided for in Sections 254 and 275, and other pertinent provisions of the NIRC of 1997, as amended.

SECTION 5. Repealing Clause. — Any rules and regulations or parts thereof inconsistent with the provisions of these Regulations are hereby repealed, amended, or modified accordingly.

SECTION 6. Effectivity. — The provisions of these Regulations shall take effect after fifteen (15) days following publication in any newspaper of general circulation.<sup>1</sup>

The *ponencia* partially granted the separate Petitions for Prohibition and *Mandamus*<sup>2</sup> filed by the IBP and ASAPPI, as well as the Petitions-in-Intervention<sup>3</sup> of PCP, PMAI and PDA, and declared void Sections 2(1) and

<sup>1</sup> Bureau of Internal Revenue, Revenue Regulations No. 4-2014, at <[https://www.bir.gov.ph/images/bir\\_files/internal\\_communications\\_1/Full%20Text%20RR%202014/fulltextRR4\\_2014.pdf](https://www.bir.gov.ph/images/bir_files/internal_communications_1/Full%20Text%20RR%202014/fulltextRR4_2014.pdf)> (last accessed on February 26, 2023).

<sup>2</sup> *Rollo* (G.R. No. 211772), pp. 3–38; *rollo* (G.R. No. 212178), pp. 3–36.

<sup>3</sup> *Rollo* (G.R. No. 211772), pp. 50–73, 99–110, and 148–170.

2(2) of the assailed RR, for having been issued in excess of the DOF's jurisdiction.<sup>4</sup> The *ponencia* thus permanently enjoined the DOF and the BIR, their officers, agents and employees, from implementing the unconstitutional provisions.<sup>5</sup>

Senior Associate Justice, Hon. Marvic Mario Victor F. Leonen has discussed the issues in this case with utmost clarity. Nonetheless, I wish to add to the *ponencia*'s discussions relating to Section 2(1) of RR No. 4-2014. It should be noted that, under the said provision, self-employed professionals, such as lawyers, physicians, dentists, and accountants represented by the petitioners and the petitioners-in-intervention, are required to “submit an affidavit indicating the rates, manner of billings and the factors they consider in determining their service fees upon registration and every year thereafter on or before January 31.”<sup>6</sup>

I disagree with the respondents' position that the submission of the affidavit by a self-employed professional is a reasonable requirement, the same being necessary for the performance of the BIR's duties.

First, the submission of the affidavit indicating the rates, manner of billings, and the factors that the professional considers in determining service fees is outside the scope of the BIR's delegated legislative authority.

While the power to enact laws is lodged with the legislature under the principle of separation of powers, this power may be delegated to the executive to fill in the details of the law.<sup>7</sup> To be a valid delegation, however, the executive issuance must remain within the scope of authority given by the legislature.<sup>8</sup>

An examination of Section 5 of the National Internal Revenue Code of 1997 (NIRC) shows that the information that the BIR Commissioner may obtain from a taxpayer pertain to concluded, and therefore taxable, transactions.

*SEC. 5. Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.* – In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

<sup>4</sup> *Ponencia*, p. 45.

<sup>5</sup> *Id.*

<sup>6</sup> Revenue Regulations No. 4-2014, sec. 2(1).

<sup>7</sup> *Province of Pampanga v. Exec. Sec. Romulo and DENR*, G.R. No. 195987, January 12, 2021 [Per J. Leonen, *En Banc*].

<sup>8</sup> *Id.*

(A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry;

(B) **To obtain on a regular basis from any person** other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the *Bangko Sentral ng Pilipinas* and government-owned or -controlled corporations, **any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements** of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members; *Provided*, That the Cooperative Development Authority shall submit to the Bureau a tax incentive report, which shall include information on the income tax, value added tax, and other tax incentives availed of by cooperatives registered and enjoying incentives under Republic Act No. 6938, as amended: *Provided, further*, That the information submitted by the Cooperative Development Authority to the Bureau shall be submitted to the Department of Finance and shall be included in the database created under Republic Act No. 10708, otherwise known as "The Tax Incentives Management and Transparency Act (TIMTA)."

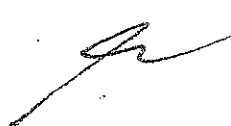
(C) To summon the person liable for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony;

(D) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry; and

(E) To cause revenue officers and employees to make a canvass from time to time of any revenue district or region and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care, management or possession of any object with respect to which a tax is imposed.

The provisions of the foregoing paragraphs notwithstanding, nothing in this Section shall be construed as granting the Commissioner the authority to inquire into bank deposits other than as provided for in Section 6(F) of this Code. (Emphasis supplied)

Of note is Section 5's purpose of ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance. The power of the BIR Commissioner to obtain information under paragraph (b) is, therefore, circumscribed by the grounds for which the power may be invoked.



It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.<sup>9</sup> Corollarily, under the doctrine of *noscitur a sociis*, where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its meaning may be made clear and specific by considering the company of the words in which it is found or with which it is associated.<sup>10</sup> Construing “any information” literally will lead to an unrestrained and unchecked power of the BIR to require the taxpayer to provide virtually any information that it may arbitrarily choose.

Although Section 5 expressly states that the information so obtained may be “any” information, the same is delimited by the subsequent enumeration: costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of taxable entities, including their members. This too the *ponencia* observed.

The affidavit required under Section 2(1) of RR No. 4-2014, in contrast, pertains to rates, manner of billing, and factors employed before service is rendered by the self-employed professional. The distinction is crucial because the BIR’s assessment and collection powers come into play only upon the happening of a taxable event, *i.e.*, the rendition of service by the self-employed professional. The exercise of the BIR Commissioner’s powers under Section 5 is clearly hinged on assessment and collection. To my mind, the submission of the required affidavit has no bearing on the (1) ascertainment of the correctness of any return, (2) the making of a return when none has been made, (3) the determination of the liability of any person for any internal revenue tax, (4) the collection of any such liability, or (5) in evaluating tax compliance.

Thus, the affidavit, which is merely indicative of the value of the services to be performed, is immaterial to the taxing authority. Even though a statement of the indicative value is disclosed to the client or person for whom the service shall be performed, the tax to be collected will still be assessed on the basis of the value of the services actually performed, charged and paid.

By expanding the kind of information that the BIR can require, the public respondents unduly expanded the grant of delegated legislative authority to it by virtue of Section 5. Congress, in enacting the Tax Code, clearly intended, as expressed in its language, that the BIR may only request such information that is pertinent to tax assessment and collection, particularly, information that reveals the value of services already performed. The

<sup>9</sup> *Philippine International Trading Corp. v. COA*, 635 Phil. 447 (2010) [Per J. Perez, *En Banc*].

<sup>10</sup> *Kua v. Barbers*, 566 Phil. 516 (2008) [Per J. Azcuna, First Division].



submission of such affidavits under the auspices of RR No. 4-2014 is, thus, arbitrary.

Second, I find that the submission of affidavits under RR No. 4-2014 constitutes an invalid exercise of police power.

In differentiating the State's police power and the power of taxation, the Court, in *Planters Products, Inc. v. Fertiphil Corp.*,<sup>11</sup> ruled:

Police power and the power of taxation are inherent powers of the State. These powers are distinct and have different tests for validity. Police power is the power of the State to enact legislation that may interfere with personal liberty or property in order to promote the general welfare, while the power of taxation is the power to levy taxes to be used for public purpose. The main purpose of police power is the regulation of a behavior or conduct, while taxation is revenue generation. The "lawful subjects" and "lawful means" tests are used to determine the validity of a law enacted under the police power. The power of taxation, on the other hand, is circumscribed by inherent and constitutional limitations.

... While it is true that the power of taxation can be used as an implement of police power, the primary purpose of the levy is revenue generation. If the purpose is primarily revenue, or if revenue is, at least, one of the real and substantial purposes, then the exaction is properly called a tax.<sup>12</sup>

That RR No. 4-2014 was issued in the exercise of the State's police power is apparent from Section 1, which identifies affidavit submission, in particular, as a complement to the BIR's campaign to enjoin professionals to register as taxpayers under Section 236 and to issue official receipts and invoices under Sections 113 and 237 of the NIRC. Section 1 likewise mentions a "pressing need to monitor the service fees charged by self-employed professionals."

True, the second paragraph likewise states that RR No. 4-2014 is intended to aid BIR personnel in conducting tax audit and boost revenue collections in the professional sector. However, this does not automatically mean that such regulation comes within the scope of the State's taxation power. It should be noted that RR No. 4-2014 imposes no new tax or levy. Instead, it unmistakably pinpoints to monitoring fees as its principal purpose. The imposition creates an added burden on the part of the taxpayer-professional to submit additional documents in order to fulfill the BIR's self-avowed objectives.

<sup>11</sup> 572 Phil. 270 (2008) [Per J. R. T. Reyes, Third Division].

<sup>12</sup> *Id.* at 293-294.

While it has long been recognized that “[t]axation may be made the implement of the state’s police power,”<sup>13</sup> government is not precluded to pursue the converse, that is, to use police power to enforce its power to tax. In this case, it is clear, that the government, in a purported bid to address tax compliance and curb tax evasion among a certain class of taxpayers, sought to leverage police power by imposing onerous requirements to self-employed professionals. Again, it is worth emphasizing that the regulation in question does not impose a new tax but provides requirements for compliance of the taxpayers.

As early as the case of *The United States v. Dominador Gomez Jesus*,<sup>14</sup> the Court has established that police power is exercised to ensure “extends to the protection of the lives, limbs, health, comfort, and quiet of all persons and the protection of all property within the state. Persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the state.”<sup>15</sup> The orderly and efficient enforcement of our taxation laws, clearly fall among these avowed objectives of police power, given that taxation provides the life blood of government, its collection is indispensable to the government’s continued existence and ability to protect its population. As such, it is necessary to distinguish between the power to tax per se, and the power to regulate the people’s behavior as regards tax compliance, which partakes of police power.

Given that RR No. 4-2014 is demonstrably anchored on police power, it becomes critical to determine whether it passes the twin tests of lawful purpose and lawful means. Expansive and extensive as its reach may be, police power is not a force without limits.<sup>16</sup> It has to be exercised within bounds – lawful ends through lawful means, *i.e.*, that the interests of the public generally, as distinguished from that of a particular class, require its exercise, and that the means employed are reasonably necessary for the accomplishment of the purpose while not being unduly oppressive upon individuals.

I do not find the avowed purpose of RR No. 4-2014 as genuine.

There is no logical nexus between the affidavits and registration under Section 236 and the issuance of official receipts and invoices under Sections 113 and 237. RR No. 4-2014 is unnervingly silent as to how the submitted affidavits can be used in relation to assessment and collection. It does not pinpoint what bearing these affidavits have on the taxpayer-professional’s registration, nor to the issuance of official receipts and invoices. If the purpose is to boost revenue collections, how will the information disclosed in

<sup>13</sup> *Lutz v. Araneta*, 98 Phil. 148 (1955) [Per J. J.B.L. Reyes, First Division].

<sup>14</sup> 31 Phil. 218 (1915) [Per J. Johnson, *En Banc*].

<sup>15</sup> *Id.*

<sup>16</sup> *Zabal v. Duterte*, 846 Phil. 743 (2019) [Per J. Del Castillo, *En Banc*].



the affidavits impact the taxes paid and returns submitted by the taxpayer-professional? If the submissions are not binding, why did the BIR require them in the first place? The BIR cannot simply request and retain information for retention's sake.

RR No. 4-2014's self-appointed purposes of aiding BIR personnel in conducting tax audits and boosting revenue collections, must be compatible with its statutory power and duty of assessment and collections of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith.<sup>17</sup> Corollarily, its power to request information from the taxpayer is further restricted by Section 5 itself, for the purposes of ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance. Failure to identify the relationship between the requested information and assessment and collection constitutes a fatal flaw. Simply put, there is no lawful purpose here.

I am uncomfortable in leaving the question of the specific purpose of the affidavits unanswered because it goes into the reasonableness of RR No. 4-2014. We cannot set aside how the BIR Commissioner will use the disclosed information because it will serve as the litmus test of whether there is a genuine lawful purpose behind RR No. 4-2014.

The *ponencia* aptly observes that the submitted affidavits do not, after all, bind the professional under the Tax Code nor RR No. 4-2014, should the Court allow these as now required submissions under RR No. 4-2014, they can become the basis of perjury charges.

For perjury to exist, (1) there must be a sworn statement that is required by law; (2) it must be made under oath before a competent officer; (3) the statement contains a deliberate assertion of falsehood; and (4) the false declaration is with regard to a material matter.<sup>18</sup>

By giving imprimatur to RR No. 4-2014, simply because the public respondent BIR Commissioner has deemed such information necessary to her duties, the Court may effectively affirm that the information so submitted are material matters to the taxing authority, the deliberate false declaration of which can result in criminal liability. Sure, case law is abundantly clear that for perjury charges to prosper, it must be proven that it was committed with intent to be dishonest. However, what worries me is the not too remote possibility that mere mistakes in the affidavit, or discrepancies between the

<sup>17</sup> NATIONAL INTERNAL REVENUE CODE, sec. 2.

<sup>18</sup> *Masangkay v. People*, 635 Phil. 220 (2010) [Per J. Del Castillo, First Division].





indicated value of services and the fees actually charged, would result in a deluge of criminal cases against professionals filed by disgruntled clients.

More alarmingly, it is worrisome that the BIR arrogated unto itself the authority to monitor the fees charged by self-employed professionals, each of whom have their own regulatory bodies, which in the case of physicians, dentists, and accountants, are the various professional regulatory boards supervised by the Professional Regulation Commission, and in the case of lawyers, no less than by this Court. RR No. 4-2014 thus encroaches on the functions endowed by Congress and the Constitution in so far as the regulation of professions is concerned.

To reiterate, the power of the BIR, as granted by Congress through Section 5, is hyper-focused on assessment and collection. RR No. 4-2014, by highlighting monitoring of service fees of professionals as its self-described purpose, shifted the intended objective of Congress to one that it did not sanction.

The submission of the affidavits under Section 2(1) of RR No. 4-2014 may seem innocuous and would not create an undue burden on the self-employed professionals, but there must always be a lawful purpose behind it. Absent a lawful purpose, RR No. 4-2014 must be struck down for being an invalid exercise of police power.

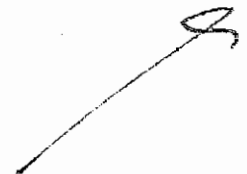
The importance of a lawful purpose behind an administrative regulation was highlighted by the Court in the recent case of *Philippine Stock Exchange, Inc. v. Secretary of Finance*.<sup>19</sup> Albeit analyzed and resolved using the right to privacy, I find the Court's discussion on the purpose behind a similar Revenue Regulation, which mandated a withholding agent to list down the Philippine Central Depository (PCD) Nominees as payees, disclosing at the same time all the principals and their personal information in the alphalist, apt and relevant.<sup>20</sup>

Looking into the ultimate purpose of RR 1-2014, the Chief Justice noted that even without the disclosure of the personal information, the BIR is able to collect withholding taxes due from dividend income. Further, the personal information sought by the BIR through RR 1-20 14 are already available publicly in the reportorial documents that corporations, especially listed companies, submit to SEC. As the RR 1-2014's purported objectives of efficient collection of withholding taxes and collection of personal information are already rightly met even before its issuance ( or even during its suspended enforcement by virtue of this Court's TRO), the Chief Justice posed this question: what is RR 1-2014's ultimate purpose then?

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<sup>19</sup> G.R. No. 213860, July 5, 2022 [Per J. Hernando, *En Banc*].

<sup>20</sup> *Id.*



RR 1-2014 states that it is issued for “purposes of ensuring that information on all income payments paid by employers/payors, whether or not subject to the withholding tax x x x, are monitored by and captured in the taxpayer database of the Bureau of Internal Revenue (BIR), with the end in view of establishing simulation model, formulating analytical framework for policy analysis, and institutionalizing appropriate enforcement activities.”

For the Court, and as emphasized by the Chief Justice, these objectives are vague and highly subjective.<sup>21</sup>

The same observation avails in the case of RR No. 4-2014.

A final word.

In so far as lawyers are concerned, may I also point out that the Code of Professional Responsibility and Accountability (CPRA) includes a provision requiring IBP Chapters to provide a recommended schedule of fees, something which the *ponencia* likewise noted in the case of IBP Cebu. Canon III, Section 41 states:

SECTION 41. *Fair and reasonable fees.* — A lawyer shall charge only fair and reasonable fees.

Attorney’s fees shall be deemed fair and reasonable if determined based on the following factors:

....

**(e) The customary charges for similar services and the recommended schedule of fees, which the IBP chapter shall provide[.]**

This provision under the CPRA will better aid the noble purpose of transparency sought by the BIR, and which this Court very much shares. Thus, the information sought by the BIR through RR No. 4-2014 can be more reliably obtained through a schedule of fees published by impartial actors such as the IBP Chapter.

All told, I concur in the *ponencia* that Sections 2(1) and 2(2) of RR No. 4-2014 must be struck down for being unconstitutional, subject to the foregoing discussions.

  
MARIA FILOMENA D. SINGH  
Associate Justice

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<sup>21</sup> *Id.*