REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 1993** (CTA Case No. 9023)
	Present:
-*versus*-	**DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
THE COURT OF TAX APPEALS - SPECIAL FIRST DIVISION and GOODYEAR PHILIPPINES, INC., *Respondent.*	Promulgated: JUN 19 2020 3:42 p.m.

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DECISION

MANAHAN, J.:

Before the Court *En Banc* is a Petition for Certiorari[1] under Section 1, Rule 65 of the Revised Rules of Court, seeking to reverse and set aside the Resolutions dated July 10, 2018[2] and November 6, 2018[3] of the Court of Tax Appeals - First Division (CTA-1st Division)[4] in CTA Case No. 9023 entitled *Goodyear Philippines, Inc. v. Commissioner of Internal Revenue.*

The assailed Resolutions denied the Petition for Relief from Judgment dated April 11, 2018, filed by the Commissioner of Internal Revenue (CIR), against the Decision[5] dated December 11, 2017, which ordered the refund of Php18,784,742.85 in favor of Goodyear Philippines, Inc.,

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[1] *Rollo*, pp. 1-18.
[2] *Rollo*, pp. 25-29.
[3] *Rollo*, pp. 30-36.
[4] Composed of Honorable Presiding Justice Roman G. Del Rosario, Associate Justice Erlinda P. Uy, and Associate Justice Cielito N. Mindaro-Grulla.
[5] *Rollo*, pp. 77-106. *am*

representing erroneously withheld and remitted Final Withholding Tax (FWT) in relation to the redemption of 2,597,133 preferred shares.

The Facts

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR), the government agency in charge of, among others, the assessment and collection of all internal revenue taxes, fees, and charges. He may be served with legal processes through his counsels, at the BIR Litigation Division, with office address at Room 703, BIR National Office Building, BIR Road, Diliman, Quezon City.[6]

Public respondent, the Honorable Court of Tax Appeals First Division, is impleaded as the court which promulgated the resolutions in question. Respondent Court is located at the National Government Center, Agham Road, North Triangle, Diliman, Quezon City.

Private respondent Goodyear Philippines, Inc. (Goodyear) is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. It may be served with legal processes through counsel with office address at 19th Floor, Tower 1, The Enterprise Center, 6766 Ayala Avenue, Makati City.

The Court in Division recites the antecedents, as follows:

> On August 19, 2003, the SEC approved petitioner's [now, private respondent] application for the increase of its authorized capital stock from P400,000,000.00, divided into 4,000,000 shares with par value of P100.00 each, to P1,731,863,000.00 divided into 4,000,000 common shares with par value of P100.00 each and 13,318,630 preferred shares with a par value of P100.00 each.
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> Article 7(4) of petitioner's Articles of Incorporation states that each and every certificate of preferred shares shall be subject to redemption, and may, at the option of the Board of Directors, regardless of the existence of unrestricted retained earnings in the books of the Corporation, on any semi-annual dividend date at any time after one (1) year from the date of the issuance of

[6] *Rollo*, Petition for Certiorari, p. 5.

such certificate, be called and retired at the price of P100.00 for each share and the amount of dividends accrued and unpaid at the date of the redemption.

On March 5, 2013, the Board of Directors and the Stockholders of petitioner unanimously approved the redemption on April 11, 2013 of the 2,597,133 preferred shares issued to Goodyear Tire and Rubber Company (GTRC); a non-resident foreign corporation duly organized and existing under the laws of the State of Ohio, United States of America, with office address at 1144 East Market Street, Akron, Ohio. GTRC is not registered as a corporation or partnership in the Philippines.

Petitioner paid the total redemption price amounting to P384,944,919.00 to GTRC.

On April 3, 2013, petitioner withheld and remitted to the BIR the amount of P18,784,742.85, representing the fifteen percent (15%) FWT imposed under Section 28(B)(5)(b) of the National Internal Revenue Code (NIRC) of 1997, as amended, computed on the basis of the difference between the Redemption Price and the aggregate par value/cost of the shares redeemed, as follows:

Redemption Price	P 384,944,919.00
Par Value/Cost of Acquisition (P100 per share x 2,597,133 shares) Difference	P 259,713,300.00
Redemption Price	125,231,619.00
Multiplied with 15% FWT	P 18,784,742.85

On April 8, 2013, 2013, before the payment of the redemption price to GTRC, petitioner filed an application for Relief from Double Taxation (BIR Form No. 0901-C) with the International Tax Affairs Division (ITAD) of the BIR, requesting confirmation, among others, that the redemption by petitioner of its 2,597,133 preferred shares held by GTRC is not subject to Philippine income tax pursuant to paragraph 2 of Article 14 (Capital Gains) and Article 1 of the Reservation Clause of the Republic of the Philippines-United States (RP-US) Tax Treaty.

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Believing that it is entitled to the refund of the alleged erroneously withhold and remitted FWT, petitioner filed an administrative claim for refund on March 31, 2015 before the BIR – Large Taxpayer

Regular Audit Division (LTRAD) I, pursuant to Sections 204 and 229 of the NIRC of 1997, as amended.[7]

On March 31, 2015, private respondent Goodyear also filed its Petition for Review with the CTA-1st Division.[8]

After trial, the CTA-1st Division rendered its December 7, 2017 Decision, which disposed of the case as follows:

> **WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner the amount of **P18,784,742.85** representing erroneously withheld and remitted FWT in relation to the redemption of 2,597,133 preferred shares issued to GTRC on April 11, 2013.
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> **SO ORDERED**.[9]

On February 5, 2018, Records Verification stated that no appeal has been filed to the Decision dated December 7, 2017.[10]

Thus, Entry of Judgment was issued stating that the Decision dated December 7, 2017 has become final and executory on December 28, 2017, and is recorded in the Book of Entries of Judgments.[11]

On February 27, 2018, private respondent Goodyear filed its Motion for Issuance of a Writ of Execution.[12] Despite notice,[13] the CIR failed to file a comment thereto.[14]

On May 9, 2018, the Court received the CIR's Petition for Relief from Judgment,[15] posted on April 30, 2018.

On July 10, 2018, the CTA-1st Division rendered the 1st assailed Resolution, granting Goodyear's Motion for Issuance

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[7] *Rollo*, Division Decision dated December 7, 2017, pp. 78-80.
[8] *Rollo*, Division Decision dated December 7, 2017, p. 80.
[9] *Rollo*, Division Decision dated December 7, 2017, p. 105.
[10] Docket, CTA Case No. 9023, Vol. II, p. 685.
[11] Docket, Vol. II, p. 687.
[12] Docket, Vol. II, pp. 688-692.
[13] Docket, Vol. II, Resolution dated March 12, 2018, p. 694.
[14] Docket, Vol. II, Records Verification dated April 18, 2018, p. 695.
[15] Docket, Vol. II, pp. 699-716.

of a Writ of Execution, and denying the CIR's Petition for Relief from Judgment.[16] The CTA-1st Division acknowledged that while the cases assigned to BIR lawyers are voluminous, the excuse of the CIR's counsel cannot be considered sufficient justification for his failure to timely file a motion for reconsideration to the Decision dated December 7, 2017. Further, the Petition for Relief from Judgment was filed out of time.

On August 8, 2018, the Court received the CIR's Motion for Reconsideration (Re: Resolution promulgated on July 10, 2018)[17] posted on July 31, 2018. The CIR's motion was denied in the 2nd assailed Resolution, promulgated on November 6, 2018.[18]

On January 11, 2019, the CIR filed the instant Petition for Certiorari praying that the 1st Division Resolutions dated July 10, 2018 and November 6, 2018 be reversed and set aside; that due course be given to his Petition for Relief from Judgment; and, to allow him to file a Motion for Reconsideration to the Decision dated December 11, 2017.

On March 1, 2019, Goodyear filed its Comment/Opposition.[19]

The case was deemed submitted for decision on June 19, 2019,[20] considering Goodyear's Memorandum[21] filed on April 30, 2019 and the CIR's Memorandum[22] filed on May 16, 2019.

Grounds for the Petition

The CIR submits the following grounds:

I. Respondent Court acted with grave abuse of discretion, amounting to lack or excess of jurisdiction in ruling that the Petition for Relief was not filed within the period allowed by the Rules.

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[16] *Rollo*, Division Resolution dated July 10, 2018, p. 29.
[17] Docket, Vol. II, pp. 772-784.
[18] *Rollo*, Division Resolution dated November 6, 2018, pp. 30-36.
[19] *Rollo*, pp. 116-131.
[20] *Rollo*, pp. 173-174.
[21] *Rollo*, pp. 140-152.
[22] *Rollo*, pp. 153-171.

II. There is a valid reason why petitioner failed to file a motion for reconsideration of the Decision dated December 7, 2017. Nevertheless, petitioner should not be made to suffer the consequences of the negligence of his counsel.

III. Petitioner has good and substantial cause of action.

The CIR's arguments

The CIR submits that the Petition for Relief was filed within the period allowed by the Rules. It is averred that CIR's counsel only learned of the Decision dated December 7, 2017 upon receiving Goodyear's Motion for Issuance of a Writ of Execution on February 27, 2018. Thus, counting from February 27, 2018, the Petition for Relief from Judgment filed on April 30, 2018, was within the 60-day period allowed by the Rules.

The CIR also avers that due to the restructuring of the Litigation Division of the BIR and the reassignment of cases therein, the copy of the said Decision dated December 7, 2017 was inadvertently mixed with the pleadings received from various petitioners. The CIR states, as follows:

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> Subsequently, the previous handling lawyer, Atty. Sylvia R. Alma Jose, was transferred to Revenue Region No. 6-Manila.
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> The case was then reassigned to Atty. Bernardino Paul R. Somera Jr. However, a Revenue Travel Assignment Order was issued, resulting to the transfer of Atty. Somera, Jr. from Litigation Division to Revenue Region 9A (Cavite-Batangas-Mindoro-Romblon) and Atty. Josephine S. Doria to Litigation Division from Personnel Adjudication Division. xxx
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> Then, petitioner's Litigation Division underwent administrative restructuring – the former Division Chief and Assistant Chief were transferred to another division and a new Division Chief was appointed. Likewise, some

lawyers from respondent's Litigation Division resigned. Hence, the cases that had to be reassigned by the new Division Chief accumulated in number due to the resignations, transfers and reassignments of lawyers.

The cases handled by Atty. Somera and other lawyers who resigned were then reassigned among the remaining lawyers in the Litigation Division, and the above-entitled case was one of the numerous cases reassigned to the former handling lawyer Atty. Josephine S. Doria, who has just been transferred to the Litigation Division on March 13, 2017.

It is noteworthy to mention that the case was reassigned to the former handling lawyer during the time when the lawyers in Litigation Division are diminishing in numbers, due to their transfer to other offices, while others have resigned. Thus, the reassignment of cases to Atty. Doria was made by bulk – in great volume and number. The same went for originally assigned cases. Hence, the cases she has to handle escalated to an inordinate number of 150.

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The former handling lawyer was surprised to learn that the Honorable Court has already rendered a Decision on the Petition for Review as she was never aware of the same until she received petitioner's Motion for Issuance of Writ of Execution on 27 February 2018.

Atty. Doria went over all her documentary files and folders to determine if she has received the said decision. Unfortunately, she discovered that the said Decision has been inadvertently mingled with the pleadings coming from other petitioners in view of the numerous Notices, Resolutions, Decisions, and Pleadings, Atty. Doria has to receive daily borne about by the great number of cases she is handling.

Since, the said Decision has been unintentionally placed in a wrong portfolio instead of being incorporated with respondent's counsel file of Court's Decisions, Resolutions and Notices, undersigned counsel was not able to file a Motion for Reconsideration as she was not aware that there was already a Decision on the Petition for Review.[23]

The CIR further states that he has a good and substantial cause of action or defense against the Decision dated December 7, 2017 and reiterates that Goodyear is not entitled to the refund of its allegedly erroneously withheld and remitted FWT amounting to Php18,784,742.85.

Goodyear's arguments

Goodyear argues that the CTA-1st Division did not commit grave abuse of discretion amounting to lack or excess of jurisdiction. The denial of the Petition for Relief was made in accordance with the Rules of Court taking into account properly established evidence. The CIR was indeed late in his filing of the Petition for Relief, and the only act left to the CTA-1st Division was to proceed with the entering of the judgment. Thus, the claim for grave abuse of discretion is wanting.

Goodyear also states that the Decision dated December 7, 2017 has become final and executory due to the CIR's failure to file his motion for reconsideration.

Goodyear also states that the argument laid down by CIR's counsel as to the overwhelming case load and restructuring of the BIR Litigation Division cannot be made as an excuse for disregarding the remedies provided under the Rules of Court. Furthermore, Goodyear asserts that the Supreme Court has already ruled that Petition for Relief of Judgment cannot be afforded by the party when such loss of remedy was due to his own negligence.

Goodyear reiterates that notice to counsel is binding on his client.

Finally, Goodyear argues that the CIR presented no new argument to warrant the granting of the petition for certiorari.

Ruling of the Court

The petition lacks merit.

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[23] *Rollo*, Petition for Certiorari filed on January 11, 2019, pp. 6-7.

The Petition for Certiorari was timely filed.

On November 14, 2018, the CIR received the CTA-1st Division Resolution dated November 6, 2018. Under Rule 65 of the Revised Rules of Court,[24] the CIR has sixty (60) days from November 14, 2018, or until January 13, 2019 within which to file the instant petition assailing the validity of the CTA-1st Division's Resolutions dated July 10, 2018 and November 6, 2018.

Thus, the subject Petition for Certiorari was timely filed on January 11, 2019.

There is no grave abuse of discretion in the Court in Division's Resolutions.

This is a petition for certiorari[25] where the CIR questions the actions of the CTA-1st Division and alleges grave abuse of discretion in the assailed Resolutions dated July 10, 2018 and November 6, 2018.

Upon review of the arguments presented and records of the case, We find no grave abuse of discretion in the CTA-1st Division's Resolutions dated July 10, 2018 and November 6, 2018, which ruled that the CIR's Petition for Relief from Judgment filed on April 30, 2018 was filed out of time.

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[24] Rule 65 *Certiorari, Prohibition and Mandamus*
Section 4. *When and where position filed.* – 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 sixty (60) day period shall be counted from notice of the denial of said motion.
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[25] Rule 65 *Certiorari, Prohibition and Mandamus*
Section 1. *Petition for certiorari.* – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
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Under the Rules of Court, a petition for relief of judgment may be filed as follows:

> SECTION 1. *Petition for relief from judgment, order, or other proceedings.* – When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.
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> SECTION 3. *Time for filing petition; contents and verification.* – A petition provided for in either of the preceding sections of this Rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken, and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's and substantial cause of action or defense, as the case may be.

Records show that the December 7, 2017 Decision of the CTA-1st Division was received by the BIR-Litigation Division on December 11, 2017, and Office of the Solicitor General On December 12, 2017. The CIR does not deny receipt of the Decision, but merely alleges that the Decision was inadvertently mixed with other pleadings received from various petitioners.

Because of the alleged misfiling of the Decision in CIR's counsel's pleadings, the CIR failed to file a motion for reconsideration, and alleges that he only learned that there was already a Decision on CTA Case No. 9023 when he received Goodyear's Motion for Issuance of a Writ of Execution. Thus, the CIR filed the Petition for Relief of Judgment via registered mail on April 30, 2018, which was received by the Court on May 9, 2018.

Given these circumstances, the CTA-1st Division correctly held that the Petition for Relief from Judgment filed by the CIR was filed out of time.

First, there is no dispute that the CIR received the Decision dated December 7, 2017 on December 11, 2017.

Second, the CIR failed to file any motion for reconsideration of the said Decision, thus rendering the Decision final and executory.

Third, the CIR's posting of the Petition for Relief from Judgment on April 30, 2018, is clearly more than sixty (60) days from the date of receipt of the Decision.

Finally, the CIR does not present any compelling reason for this Court to disregard the CIR's actual receipt of the Decision on December 11, 2017. We cannot give credence to the excuse that the CIR's counsel only learned of the Decision when he received notice of Goodyear's Motion for Issuance of a Writ of Execution.

The discussions of the CTA-1st Division are reiterated as follows:

> In resolving [respondent's][26] Petition for Relief of Judgment, the Court applied Section 3 of Rule 38 of the Rules of Court. Hence, respondent should have filed his petition 60 days from receipt of the Decision and not from his receipt of petitioner's Motion for Issuance of a Writ of Execution. Respondent's assertion that he only learned of the Decision of the Court upon receipt of petitioner's Motion for Issuance of a Writ of Execution is belied by records showing that the BIR Litigation Division received the said Decision on December 11, 2017. Besides, respondent has in fact admitted that his counsel actually received the Decision, but was mingled with other pleadings. Thus, the claim that his counsel was not aware that there is already a decision and at the same time admitting that respondent found the Decision among other pleadings, is contradicting.
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> To reiterate, the 60-day period from knowledge of the decision, and the 6-month period from entry of judgment under Section 3, Rule 38 of the Rules of Court, are both inextendible and uninterruptible. Moreover, because relief from a final and executor judgment is really more of an exception than a rule due to its equitable character and nature, strict compliance

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[26] Petitioner CIR in the instant case.

with these periods, which are definitely jurisdictional, must always be observed. A petition for relief from judgment filed beyond the reglementary period is dismissed outright. This is because a petition for relief from judgment is an exception to the public policy of immutability of final judgments.

Even if we assume that the petition was filed on time, it must first be established that the failure of respondent's former counsel to timely file an appeal was due to excusable negligence before a relief from judgment can be granted.

However, the Court believes that respondent's negligence could have been prevented by exercise of ordinary diligence and prudence. Despite the resignations, transfers and reassignments of lawyers in the Litigation Division, and that no proper turnover was made by lawyers who resigned or transferred, still, as with other offices, the Litigation Division should have a system in place for monitoring the progress of cases handled by its lawyers and for distributing pleadings, notices and other documents.

The Court notes that the Revenue Travel Assignment Orders (RTAOs) submitted by respondent were issued in January 19, 2017 and February 8, 2017. Moreover, as alleged in the petition for relief by the former handling lawyer of this case, Atty. Josephine Doria, this case was reassigned to her when she transferred to the Litigation Division on March 13, 2017. It should be noted that the Decision dated December 7, 2017 was received by the BIR-Litigation Division on December 11, 2017. Thus, the Court finds that the former handling counsel has ample time to take charge of the cases assigned/reassigned to her. The transfer of Atty. Romel Curiba, Chief of Litigation Division, to the Government Service Insurance System (GSIS) in December 2017, which is also the month when the Decision dated December 7, 2017 was received by respondent cannot be made as an excuse considering that she was already the assigned lawyer for this case since March 2017. Accordingly, such negligence is not excusable, much less unavoidable, that could merit relief under Rule 38 of the Rules of Court.

Before a relief from judgment can be granted, fraud, accident, mistake or excusable negligence should

> first be established. Negligence, to be excusable, must be such that ordinary diligence and prudence could not have guarded against it. Indeed, relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own (or that of his counsel) negligence; otherwise, the petition for relief can be used to revive the right to appeal which had been lost through inexcusable negligence.
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> Anent respondent's claim that he has good and substantial cause of action to warrant the revival of the case and the relief from adverse judgment, the Court is not convinced.
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> The Court has noted in the factual antecedents of its Decision that respondent was considered to have waived the right to present evidence considering that the presentation of respondent's evidence had already been reset upon motion of his counsel, yet no judicial affidavit of respondent's witness had been filed, and his counsel of record was absent without explanation. Lastly, he also failed to submit his memorandum despite the period given by the Court.
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> From the foregoing, respondent showed no interest in defending his case. Accordingly, the Court finds no reason to grant respondent's petition for relief from judgment. Respondent showed interest in proving his cause only after a decision, which was adverse to him, had been rendered. If he firmly believed that he had a good cause of action, he should have presented his evidence during trial for this Court's consideration.[27] (*citations omitted*)

Thus, We find that the Resolutions by the CTA-1st Division are in accord with law and jurisprudence. There is no grave abuse of discretion amounting to lack or excess of jurisdiction.

WHEREFORE, the Petition for Certiorari filed by the Commissioner of Internal Revenue is **DISMISSED** for lack of

[27] *Rollo*, Division Resolution dated November 6, 2018, pp. 32-36

merit. The assailed Resolutions in CTA Case No. 9023, dated July 10, 2018 and November 6, 2018 are **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(with Concurring and Dissenting Opinion)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the 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

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

THE COURT OF TAX APPEALS - SPECIAL FIRST DIVISION and GOODYEAR PHILIPPINES, INC.,
Respondents.

CTA EB NO. 1993
(CTA CASE NO. 9023)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUN 19 2020
3:42 p.m.

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CONCURRING AND DISSENTING OPINION

Bacorro-Villena, J.

I concur in the dismissal of the Petition for *Certiorari*, seeking the reversal of the 10 July 2018 and 06 November 2018 Resolutions of the First Division of this Court in CTA Case No. 9023, entitled *Goodyear Philippines, Inc. v. Commissioner of Internal Revenue.*

However, with all due respect, I take exception from the *ratio* relied upon in the *ponencia.*

Taking into mind the various relevant jurisprudence relating to the Court *En Banc's* jurisdiction to entertain a petition for *certiorari* under Rule 65 of the Rules of Court, at least insofar as it is directed against the orders falling under Rule 41 of the Rules of Court, I herein respectfully state the bases of my dissenting opinion on the matter.

The power of the Court of Tax Appeals (**CTA**) *En Banc* to review interlocutory orders of its divisions has already been decided in the *Commissioner of Internal Revenue v. Court of Tax Appeals and CBK Power Company Limited*[1] (**CBK**) wherein the Supreme Court categorically held that "**the CTA En Banc has jurisdiction over final order or judgment but not over interlocutory orders issued by the CTA in division**".

In herein case, the subject of the present Petition for *Certiorari* are interlocutory orders of the Court's First Division. In particular, the Resolutions of 10 July 2018 and 06 November 2018, respectively, on the petitioner's Petition for Relief of Judgment.

In explaining its view, the Supreme Court in *CBK* discussed the suppletory application of Rule 41[2] of the Rules of Court to the CTA's jurisdiction, to wit:

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1 G.R. Nos. 203054-55, 29 July 2015.

2 Section 1. Subject of appeal.
An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

(a) An order denying a motion for new trial or reconsideration;
(b) An order denying a petition for relief or any similar motion seeking relief from judgment;
(c) An interlocutory order;
(d) An order disallowing or dismissing an appeal;
(e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
(f) An order of execution;
(g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
(h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.
...

> ...
> Given the foregoing, the petition for review to be filed with the CTA *en banc* as the mode for appealing a decision, resolution, or order of the CTA Division, under Section 18 of Republic Act No. 1125, as amended, is not a totally new remedy, unique to the CTA, with a special application or use therein. To the contrary, the CTA merely adopts the procedure for petitions for review and appeals long established and practiced in other Philippine courts. Accordingly, doctrines, principles, rules, and precedents laid down in jurisprudence by this Court as regards petitions for review and appeals in courts of general jurisdiction should likewise bind the CTA, and it cannot depart therefrom.
> ...
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> According to Section 1, Rule 41 of the Revised Rules of Court, governing appeals from the Regional Trial Courts (RTCs) to the Court of Appeals, an appeal may be taken only from a judgment or final order that completely disposes of the case or of a matter therein when declared by the Rules to be appealable. Said provision, thus, explicitly states that no appeal may be taken from an interlocutory order. **It is, therefore, clear that the CTA *en banc* has jurisdiction over final order or judgment but not over interlocutory orders issued by the CTA in division**. [3]
> ...

Additionally, in *Agnes Coeli Bugaoisan v. OWI Group Manila and Morris Corporation*[4] (***Bugaoisan***), the Supreme Court explained the function of a writ of *certiorari* in this wise:

> ...
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> A writ of certiorari may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. **It cannot be used for any other purpose, as its function is limited to keeping the inferior court within the bounds of its jurisdiction.**
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> **The supervisory jurisdiction of a court over the issuance of a writ of *certiorari* cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court**...[5]
> ...

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[3] Supra at Note 1; emphasis and underscoring supplied.
[4] G.R. No. 226208, 07 February 2018.
[5] Emphasis and underscoring supplied.

In another case, the Supreme Court also declared that a petition for *certiorari* under Rule 65 of the Rules of Court is "**a remedy specifically [aimed] to keep lower courts and tribunals within the bounds of their jurisdiction**".[6]

Furthermore, even in the case of *The City of Manila et al. v. Hon. Caridad H. Grecia-Cuerdo*[7], where the power of the CTA to issue a writ of *certiorari* was affirmed, the Supreme Court categorically stated that, "**a court may issue a writ of *certiorari* in aid of its appellate jurisdiction if said court has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the lower court**."[8] It is worthy to note at this point that the ruling in this case came prior to the Supreme Court's decision in the case of *CBK*.

Based on these principles and consistent with the jurisprudential declarations above, it appears that a writ of *certiorari* can only be issued by a court against the orders of an inferior court or tribunal. **The CTA in Division is not, however, a lower court in relation to the CTA *En Banc*.**

In *Landbank of the Philippines v. Federico Suntay*[9] (***Landbank***), the Supreme Court declared:

> ...
> **The actions taken and the decisions rendered by any of the divisions are those of the Court itself, considering that the divisions are not considered separate and distinct courts but as divisions of one and the same court.**[10]
> ...

While, in *Commissioner of Internal Revenue v. Kepco Ilijan Corporation*[11] (**Kepco**), the Supreme Court held that the foregoing principle is likewise applicable to other collegiate courts such as the Court of Tax Appeals. *Kepco* tackled an issue analogous to that presented before us now. In the said case, petitioner sought the reversal of the CTA *En Banc*'s resolution denying the Commissioner of

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6 *Marvin Cruz et al. v. People*, G.R. No. 224974, 03 July 2017.
7 G.R. No. 175723, 04 February 2014.
8 Emphasis and underscoring supplied.
9 G.R. No. 188376, 14 December 2011.
10 Emphasis supplied.
11 G.R. No. 199422, 21 June 2016.

Internal Revenue's (**CIR's**) Petition for Annulment of Judgment of the CTA Special First Division's decision on the ground of lack of jurisdiction. The Supreme Court in upholding this Court's actions ruled thusly:

> ...
> Thus, it appears contrary to these features that a collegial court, sitting *en banc*, may be called upon to annul a decision of one of its divisions which had become final and executory, for it is tantamount to allowing a court to annul its own judgment and acknowledging that a hierarchy exists within such court...
>
> Thus, the Revised Rules of the CTA and even the Rules of Court which apply suppletorily thereto provide for no instance in which the *en banc* may reverse, annul or void a *final decision* of a division.
> ...

Given the doctrine laid down in *Kepco*, I see no reason why We should treat a petition for *certiorari* against the Court in Division in the same way the Supreme Court treated a petition for annulment of judgment in *Kepco*. Similar to a petition for annulment of judgment, a petition for *certiorari* requires the exercise of a court's original jurisdiction as it is an action independent from a previous case wherein the assailed order or resolution was issued. The petition likewise calls for a higher court to correct errors of jurisdiction committed by an inferior court or body.

Given the pronouncements of the Supreme Court on the province of a writ of *certiorari* as discussed above, to my mind, the CTA *En Banc's* lack of jurisdiction over petitions for *certiorari* is more than clear. It is, therefore, my humble conclusion that petitioner Commissioner of Internal Revenue's present Petition for *Certiorari* should be denied for lack of jurisdiction.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice