

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PEOPLE OF THE
PHILIPPINES,

Petitioner,

CTA EB CRIM NO. 136
(CTA Crim. Case No. O-991)

Present:

-versus-

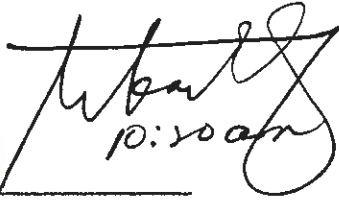
QNX SOLUTIONS,
INCORPORATED and its
responsible corporate officers
ANGELO R. BALILI,
(President), SANTIAGO T.
PULIDO (Treasure) and
GETRUDEDES S. TAMAYO
(Corporate Secretary),

Respondents.

DEL ROSARIO, P.J.,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, and
ANGELES, JJ.

Promulgated:

NOV 04 2024



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RESOLUTION

To recall, on December 29, 2023, petitioner filed through registered mail the *Petition for Review*, seeking the reversal of the Resolution dated August 11, 2023, which dismissed CTA Crim Case No. O-991 on the ground of prescription, and Resolution dated December 1, 2023, which denied petitioner's motion for reconsideration thereto on the ground that the said motion was filed out of time.

In a Resolution dated April 3, 2024, the Court noted that the aforementioned *Petition* did not include, among others, proof of service of the said *Petition* to respondents, as required under Section 5, Rule 43 of the Rules of Court, as amended (ROC). The Court thus directed petitioner to submit the same within ten (10) days from notice.

On April 29, 2024, petitioner filed through accredited courier its *Compliance*, submitting to the Court a copy of the *Petition*, allegedly duly served to respondents through accredited courier at the BIR registered address of QNX Solutions, Inc.

In a Minute Resolution dated May 24, 2024, the Court merely noted petitioner's submission and directed respondents to file its comment to the *Petition*. On July 11, 2024, the Court received the *Records Verification Report* stating that the said Minute Resolution sent to respondents through registered mail, was returned to the Court with the notation "Moved-Out."

Section 9, Rule 9 of the Revised Rules of the Court of Tax Appeals (RRCTA) provides the manner in which an appeal in criminal cases decided by Court in Division may be taken to the Court *en banc*, *to wit*:

SECTION 9. Appeal; Period to Appeal. — x x x

(b) An appeal to the Court *en banc* in criminal cases decided by the Court in Division shall be taken by filing a petition for review **as provided in Rule 43 of the Rules of Court** within fifteen days from receipt of a copy of the decision or resolution appealed from. The Court may, for good cause, extend the time for filing of the petition for review for an additional period not exceeding fifteen days. (*Emphasis supplied*)

Relative thereto, Sections 5 and 7, Rule 43 of the ROC requires, under the penalty of dismissal, the submission of proof of service of the petition to the adverse party, as follows:

Section 5. How appeal taken. — Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, **with proof of service of a copy thereof on the adverse party** and on the court or agency *a quo*.

x x x

Section 7. Effect of failure to comply with requirements. — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, **proof of service of the petition**, and the contents of and the documents which should accompany the **petition shall be sufficient ground for the dismissal thereof.** (*Emphasis supplied*)

Further, under Section 5, Rule 13 of the ROC, in relation to Section 17 of the same rule, service of pleadings may be made through registered mail, in which case service shall be proved by (1) an affidavit of the person mailing stating the facts showing compliance with Section 7 of the said rule, and (2) the registry receipt issued by the mailing office.

A perusal of the *Petition* filed on December 29, 2023 reveals that no proof of service to respondents was attached thereto. However, instead of dismissing the case in accordance with above-cited rules, the

Court gave petitioner a chance to comply with the same through the Resolution dated April 3, 2024. In its *Compliance*, petitioner submitted a copy of the *Petition* with several attachments, including two (2) Affidavits of Service.

The first Affidavit of Service (First Affidavit), executed by one Ms. Donna M. Errua, states in part:

That on **29 April 2024** I served a copy of the following pleading/s:

Nature of Pleading:

PETITION FOR REVIEW

In relation to the case of **“PEOPLE OF THE PHILIPPINES vs. QNX SOLUTIONS et al., CTA EB CRIM No. 136 (CTA Case No. O-991)”**

By depositing a copy of the foregoing pleading at Makati Central Post Office, Makati City as evidenced by the corresponding registry receipt number/s attached to the original pleading filed with the court and indicated after the respective names of the addressees with instruction to the post master to return the mail to the sender after ten (10) days if undelivered.

X X X

The second Affidavit of Service (Second Affidavit), likewise executed by Ms. Errua, provides:

That on **29 April 2024** I served a copy of the following pleading/s:

Nature of Pleading:

COMPLIANCE

In relation to the case of **“PEOPLE OF THE PHILIPPINES vs. QNX SOLUTIONS et al., CTA EB CRIM No. 136 (CTA Case No. O-991)”**

By sending a copy of the foregoing pleading through licensed professional courier (LBC), as evidenced by the corresponding official receipt attached to the original pleading filed with the court and indicated after the respective name of the addressees.

X X X

The Court notes that in the Resolution dated April 3, 2024, petitioner was directed to submit proof of service of the *Petition for Review* to respondents, **as required under Section 5, Rule 43 of the ROC** (i.e., as first filed with the Court on December 29, 2023). However, in the First Affidavit, the following defects are found:

1. The *Petition for Review* subject thereof was only served to respondents on April 29, 2024;
2. The Registry Receipt with no. RM 907 705 110 zz indicated therein, is actually attached to the *Petition* filed together with petitioner's *Compliance* on April 29, 2024, and not to the original *Petition* filed with the Court on December 29, 2023; and
3. The *Petition* was served to respondents through registered mail, and not through accredited courier as stated by petitioner in its *Compliance*.

Meanwhile, the subject of the Second Affidavit is petitioner's *Compliance*, and not the *Petition for Review*.

Considering the clear requirement of Section 5, Rule 43 of the ROC that an appeal shall be taken by filing a verified petition for review with the Court, **with proof of service of a copy thereof on the adverse party**, the Resolution dated April 3, 2024 is deemed **not sufficiently complied with**.

In *Spouses Maraño v. Pryce Gases, Inc.*¹, the Supreme Court reiterated that failure to append the proof of service to a petition is a **fatal defect**. The Supreme Court held, viz.:

In *Mojar, et al. v. Agro Commercial Security Service Agency, Inc., et al.*, the Court clarified that failure to append the proof of service to a petition is a fatal defect. The Court discussed in this wise:

There is no question that petitioner herein was remiss in complying with the foregoing Rule. In *Cruz v. Court of Appeals*, we ruled that with respect to motions, **proof of service is a mandatory requirement**. We find no cogent reason why this dictum should not apply and with more reason to a petition for *certiorari*, in view of Section 3, Rule 46 which requires that the petition shall be filed **"together with proof of service thereof."** We agree with the Court of Appeals that the lack of proof of service is a fatal defect. The utter disregard of the Rule cannot be justified by harking to substantial justice and the policy of liberal construction of the Rules. Technical rules of procedure are not meant to frustrate the ends of justice. Rather, they serve to

¹ G.R. No. 244233, June 3, 2019.

effect the proper and orderly disposition of cases and thus effectively prevent the clogging of our court dockets.

An affidavit of service does not work merely as proof that service has been made on the other party. Rather, its purpose is to ensure that the requirement of due process is upheld and the administration of justice is orderly maintained.

Applying the foregoing jurisprudential precept to the case at bar, together with Section 7, Rule 43 of the ROC, the Court is constrained to dismiss the instant *Petition* for failure of petitioner to comply with the aforementioned rules.

The Court is mindful that rules of procedure, in the most compelling cases, must be relaxed. However, in this case, petitioner failed to comply not only with the applicable rules, but also with the directive of the Court giving it an opportunity to comply with the same. Hence, the Court finds no cogent reason to relax the rules for petitioner.

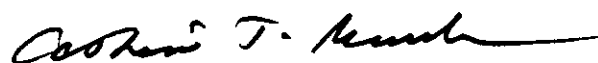
Furthermore, an appeal is not a matter of right. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the remedy of appeal must comply with the requirements of the rules; otherwise, the appeal is lost.²

WHEREFORE, premises considered, the *Petition for Review* is **DISMISSED**.

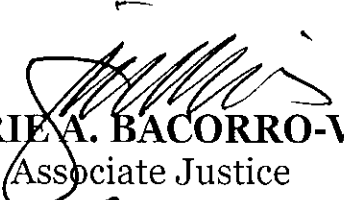
SO ORDERED.


ROMAN G. DEL ROSARIO
Presiding Justice

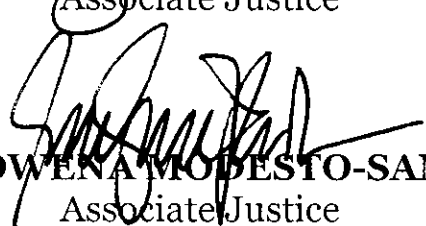

MA. BELEN M. RINGPIS-LIBAN
Associate Justice


CATHERINE T. MANAHAN
Associate Justice

² *Deepak Kumar v. People of the Philippines*, G.R., No. 247661, June 15, 2020.



JEAN MARIE A. BACORRO-VILLENA
Associate Justice



MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice



MARIAN IVY F. REYES-FAJARDO
Associate Justice



LANEE S. CUI-DAVID
Associate Justice



CORAZON G. FERRER-FLORES
Associate Justice



HENRY S. ANGELES
Associate Justice